CHAPTER TWO

DEMOCRATIZATION OF THE LEGISLATIVE EXECUTIVE, AND JUDICIAL DEPARTMENTS OF GOVERNMENT

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Introduction

The 1987 Philippine Constitution declares in its Declaration of Principles and State Policies that the Philippines is a democratic and republican state (CONST, art. II, sec. 1). Constitutionally, the Philippines is a state where government is republican in form, in the sense of American constitutionalism. Its meaning is that expressed by James Madison:

> We may define a republic to be a government which derives all its power directly or indirectly from the great body of people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favorable class of it. It is sufficient for such a government that the person administering it be appointed either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified (J. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 52 [1996]).

Further, the Philippines under the 1987 Constitution is not just a representative government but also shares some aspects of direct democracy, as the "initiative and referendum under Art. VI, Sec. 3. As a representative government is a defining characteristic of the state, the innovations in the 1987 Constitution on the three branches of government as will be discussed in this paper ensure that it remains democratic.

I. The Legislative Department

It is often argued that the existence of democracy is gauged by the presence or

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absence of a legislature. This is so as Congress – among other state agencies – is the most predisposed towards democratic rule. Naturally, it would be the first body that autocratic rulers undermine or dismantle to advance their authoritarian agenda (R. S. Velasco, "Does Philippine Congress Promote Democracy?" in F. Miranda, ed., Democratization: Philippine Perspectives, p. 281 [1997]).

In 1972, one of the first acts of then President Marcos after the proclamation of martial law was the dissolution of Congress and the padlocking of the legislative building to prevent members of Congress from convening in session. Even the interim National Assembly, provided for in the 1973 Constitution in its transitory provision (Sec. 1 of Article XVII), was not convened by the President-Prime Minister. It was only in virtue of the 1981 amendments, or 9 years later, that an interim Batasan Pambansa was called into being. And yet even with this transitional legislature, the martial law regime saw to it that the Executive had superior legislative powers, such that it could override enactments made by the Batasan. Operationally, the IBP powers were curtailed such that:

1. it could not pass a vote of no confidence in the government and so bring it down;
2. it could not repeal any of the decrees that the President had promulgated in recent years;
3. except for bills of local application, it could only consider bills that were recommended by the Cabinet; and
4. for any bills that the IBP failed to pass, the President could issue any measures (A. Catilo and P. Tapales, "The Legislature" in R. de Guzman and M. Reforma, (eds.) Government and Politics of the Philippines, pp. 151-2 [1988]).

The legislature as a barometer and an enabler of democracy traces its philosophical and rational underpinnings from the anti-absolutist and liberal ideas of Western thinkers, notably Locke, Voltaire and Rousseau. These thinkers assailed the despotic and non-accountable aristocracy as the recurring cause of abuse and unrest in Western Europe. They argued for an alternative structure allowing greater public participation in decision-making

so as to stop decay and restore order. The participatory regime called for an elective legislature or parliament where the citizens would cease to be mere recipients and followers of laws emanating from the king and the aristocracy and they were instead given power to either support or challenge existing laws or policies through their representatives (*Ibid*).

With this in mind, the 1987 Philippine Constitution introduced several changes intended to make Congress a more representative body accountable to the people and to strengthen it *vis-à-vis* the President as a reaction to the abuse of presidential power under former President Marcos. Legislators exercise collective and individual powers as they shape policy, raise revenues to support essential government services and appropriate funds in cooperation, competition and bargaining with the President. They often make use of their investigative power, their access to the media, and their patronage and funds for infrastructure (J. Abueva, "Philippine Democratization and the Consolidation of Democracy Since the 1986 EDSA Revolution: An Overview of the Main Issues, Trends and Prospects" in F. Miranda, ed., *supra*, pp. 1-81 at pp. 33-4).

The 1973 Constitution formally changed the presidential system of government under the 1935 Constitution to a modified parliamentary system. The bicameral Congress became a unicameral parliament in the Batasan Pambansa. In the presidential system before, a two party system, composed of the majority party (the party obtaining the largest number of votes) and the minority party (the party obtaining the second largest number of votes in the last elections) was formerly recognized in the Constitution, particularly in the composition of the Commission on Appointments and the Electoral Tribunals in both Houses. Representation in Congress became a monopoly of the two parties. With the 1973 Constitution introducing a parliamentary system, a multi-party system came into being. During martial rule (1972-1981) however, notwithstanding the formal provisions of the Constitution creating a representative legislature, the operative code was embodied in decrees issued by a dictatorship euphemistically called constitutional authoritarianism.

The 1987 Constitution reintroduced the bicameral body under a presidential system of government akin to the US Congress after the experiment with unicameralism under the

1973 Constitution (CONST. [1973] art. VIII, secs 1 & 2). The Congress is composed of a 250-member (where 20% thereof, or 50 members, shall be elected by means of the party-list system) House of Representatives as the Lower House and the 24-member Senate as the Upper House (CONST, art. VI, secs. 1, 2, 5(1)). Bicameralism was favored because it is believed that (1) an upper house is a body that looks at problems from the national perspective and thus serves as a check on the parochial tendency of a body elected by districts, (2) bicameralism allows for a more careful study of legislation, and (3) bicameralism is less vulnerable to attempts of the executive to control the legislature (The debates over unicameralism and bicameralism are found in II Record of the Constitutional Commission, pp. 47-69 as cited in J. Bernas, *supra*, p. 601).

Congress as the repository of the people's sovereignty and bulwark of representative democracy under the 1987 Constitution is best shown in the fact that Article VI of the Constitution providing for the roles, structures and powers of Congress precedes the two other co-equal government branches – the executive, under Article VII, and the judiciary, under Article VIII. The provisions on Congress also cover the longest portion of the Constitution with 32 sections (R. Velasco, *supra at note 1*, p. 285).

Among the other major changes in the 1987 Constitution on the legislative branch was the introduction of the party-list system so as to encourage the growth of a multi-party system (J. Bernas, *supra*, p. 628). The party-list representatives constitute twenty *per centum* of the total number of representatives including the party-list (CONSTI, art. VI, sec. 5(1)). For the first three consecutive terms after the ratification of the 1987 Constitution (the 1987 Constitution was ratified on February 2, 1987 as held by the Supreme Court in *De Leon vs. Esguerra*, 153 SCRA 602 [1987]), one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided be law, except the religious sector (CONST. art. VI, sec. 5(2)). As provided in Section 2 of the *Party-list System Act* (R.A. 7941, March 3, 1995), the party-list system is to promote proportional representation in the election of representatives

to the House of Representatives which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.

On May 11, 1998, the first election for party-list representation was held simultaneously with the national elections. One hundred twenty-three (123) parties, organizations and coalitions participated. However pursuant to the two percent (2%) rule in Republic Act No. 7941 and Resolution No. 2847, "Rules and Regulations Governing the Election of xxx Party-List Representatives Through the Party-List System" issued by the Commission on Elections (COMELEC) on June 25, 1996, only 14 of the 52 allotted seats for party-list actually won. The COMELEC *en banc* decided that the twenty percent membership of party-list representatives in the House of Representatives should be filled up. This ruling was challenged before the Supreme Court after the COMELEC proclaimed 38 other party-list representatives despite the latter not mustering the required number of votes. The Supreme Court invalidated the proclamation of the 38 party-list representatives, holding that Section 5(2), Article VI of the Constitution is not mandatory but merely provides a ceiling for party-list seats in Congress and that allowing the latter to fill-up the party-list seats would be a glaring violation of the two percent threshold requirement of R.A. No. 7941 (*Veterans Federation Party v. COMELEC*, 342 SCRA 244 [2000]). The Court, noting the low turnout of the first party-list elections, however said:

> The low turn-out of the party-list votes during the 1998 elections should not be interpreted as a total failure of the law in fulfilling the object of this new system of representation. It should not be deemed a conclusive indication that the requirements imposed by RA 7941 wholly defeated the implementation of the system. Be it remembered that the party-list system, though already popular in parliamentary democracies, is still quite new in our presidential system. We should allow it some time to take root in the consciousness of our people and in the heart of our tripartite form of republicanism. Indeed, the Comelec and the defeated litigants should not despair.

> Quite the contrary, the dismal result of the first election for party-list representatives should serve as a challenge to our sectoral parties and organizations. It should stir them to be more active and vigilant in their campaign for representation in the State's lawmaking body. It should also serve as a clarion call for innovation and creativity in adopting this novel system of popular democracy.
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> With adequate information dissemination to the public and more active sectoral parties, we are confident our people will be more responsive to future party-list elections. Armed with patience, perseverance and perspicacity, our marginalized sectors, in time, will fulfill the Filipino dream of full representation in Congress under the aegis of the party-list system, Philippine style (*Ibid*).

The multi-party system adopted in the 1987 Constitution would determine the membership of two bodies created by the Constitution, namely the Commission on Appointments, which operates to check the exercise of the appointing power of the President, and the Electoral Tribunals in both Houses which decide election contests involving their respective members. The members of Congress in these bodies shall be elected by each House on the basis of the proportional representation from the political parties and parties or organizations registered under the party-list system represented therein (CONSTI, art. VI, secs. 17 & 18).

Another new provision intended to ensure and maintain the fiduciary nature of the position of member of Congress and their fidelity to the public trust given to them is the requirement of disclosure of financial and business interests (I. Cruz, Philippine Political Law, pp. 117-8 [1995]). Section 12 of Article VI provides that:

> All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

This provision requiring the members of Congress to make known at the outset their financial and business connections or investments hopes to reduce the potential for self-aggrandizement by the members of Congress and to prevent them from using their official

positions for ulterior purposes (*Ibid*). However, this does not mean that the legislator cannot file the proposed legislation. It merely enables Congress to examine arguments presented with a sharper eye and in the context of the personal interest involved. The advance disclosure would create a presumption in favor of the legislator concerned should the legislator be later charged by his colleagues with conflict of interest (II RECORD OF THE CONSTITUTIONAL COMMISSION, pp. 165-8 cited in J. Bernas, *supra* at p. 646).

Although the members of Congress are more visible and appreciated by their constituencies for their patronage and pork barrel and "country-wide development fund" (CDF) in support of infrastructure construction (J. Abueva, *supra,* p. 34), these funds appropriated for the legislative districts are supposed to be earmarked for specific public works projects. Moreover, to obviate illegal expenditures of public funds, discretionary funds shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law (CONST. art. VI, sec. 25(6)). This new provision is intended to prevent abuse in the use of discretionary funds (J. Bernas, *supra,* p. 690). This came about because in many cases, discretionary funds were spent for personal purposes, to the prejudice and often without even the knowledge of the public (I. Cruz, *supra*, p. 160). Finally, so that the people may know how members of Congress spent the amounts appropriated for them, the 1987 Constitution requires that the records and books of accounts shall be preserved and be open to the public and the books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each member (CONST, art. VI, sec. 20).

In the 1987 Constitution the electorate now share with the Congress legislative powers. Art. VI, sec. 1 states that:

> "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except **to the extent reserved to the people by the provision on initiative and referendum**" (emphasis supplied).

With the legislative power conferred directly on the people by the provision on initiative and referendum, Section 32 of Article VI mandates Congress, as early as possible, to provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof. To this end, Congress has enacted the implementing law Republic Act No. 6735 (August 4, 1989) entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor" (otherwise known as "The Initiative and Referendum Act").

Under the law, an Initiative is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose under three (3) systems:

1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
2. Initiative on statutes which refers to a petition proposing to enact a national legislation; and
3. Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance (sec. 3(a)).

An indirect initiative is exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action (sec. 3(b)).

On the other hand, a referendum is the power of the electorate to approve or reject a legislation through an election called for the purpose. It may be of two classes, namely:

1. Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and
2. Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies (sec. 3 (c)).

However, in spite of this enabling law, the Supreme Court decided in *Santiago v. COMELEC* (270 SCRA 106 [1997]) that R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned (*supra* at p. 153). Thus, while R.A. No. 6735 is the current enabling law for Section 32 of Article VI insofar as both national and local initiative and referendum are concerned, it is not an adequate enabling law for the people's right of initiative to propose amendments to the Constitution as found in Article XVII, Section 2. Said section provides that:

> "Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
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> **The Congress shall provide for the implementation of the exercise of this right.**" (emphasis supplied)

II. The Executive Department

Unlike that for the legislative and judicial branches where the powers are vested in groups of persons: the Congress and the Supreme Court and other inferior courts respectively, Article VII, Section 1 of the 1987 Constitution, in returning to the presidential model of the 1935 Constitution, gives the executive power to just one person, the President of the Philippines (M. Manuel, "Philippine Government and its Separation and Coordination of Powers" in Politics and Governance: Theory and Practice in the Philippine

Context, pp. 77-116 at p. 93 [1999]). Executive power is briefly described as the power to enforce and administer the laws, but it is actually more than this. Plenary executive power vested to the President assumes a plenitude of authority, and corresponding awesome responsibility, making the President the most influential person in the land (I. Cruz, *supra* at p. 173). This broad executive power is even enlarged by the ruling of the Supreme Court in the case of *Marcos v. Manglapus* (177 SCRA 668 [1989]), where it declared that President Aquino had authority to prevent the return of the Marcoses even in the absence of a law expressly granting her such authority. It was held that the President has residual powers not specifically mentioned in the Constitution. Speaking through Justice Irene Cortes, the Court said:

> It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, e.g., his power over the country's foreign relations.
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> On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.
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> It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive. Thus, in the landmark decision of *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928), on the issue of who between the Governor-General of the Philippines and the Legislature may vote the shares of stock held by the Government to elect directors in the National Coal Company and the Philippine National Bank, the U.S. Supreme Court, in upholding the power of the Governor-General to do so, said:
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> > . . . Here the members of the legislature who constitute a majority of the "board" and "committee" respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of performance of any such functions by the legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor-General, it is clear that they are not

> legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one among which the powers of government are divided . . . [At 202-203; emphasis supplied.]

The Court even emphasized the above ruling in a *per curiam* resolution on a motion for reconsideration (178 SCRA 760 [1989]):

> Contrary to petitioners' view, it cannot be denied that the President, upon whom executive power is vested, has unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power.
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> That the President has powers other than those expressly stated in the Constitution is nothing new. This is recognized under the U.S. Constitution from which we have patterned the distribution of governmental powers among three (3) separate branches.

Nonetheless, owing to the conviction that former President Marcos had exercised the executive power beyond allowable limits, the 1987 Constitution had placed more structural limitations to the specific powers granted to the President – to appoint, to ensure faithful execution of the laws, to be the Commander-in-Chief of the Armed Forces, to grant clemency, and to contract foreign loans (J. Bernas, *supra* at p. 731).

Foremost among the new limitations on the President is the term limit imposed by Section 4 of Article VII. This stemmed from the presidential abuses committed by the Marcos during his 20-year reign. The 1987 Constitution provides that the term of office of the President is six years and that the President is ineligible for any reelection. The Constitutional Commission believed that six years was long enough for a good President to

implement his programs and, rather optimistically, that with the constraints built around the presidency, a bad one would not succeed in accomplishing his evil design. The elimination of the prospect of reelection is believed to make a more independent President capable of making correct even if unpopular decisions (*Ibid* at pp. 742-3).

There was a debate on the applicability of the six-year term limit to President Aquino. One interpretation was that the limit did not apply to her as she became President before the effectivity of the 1987 Constitution. To her credit though, she resisted the chance of seeking another term in 1992, in scrupulous observance of the term limit (J. Abueva, *supra* at p. 30).

A move to amend the Constitution by way of people's initiative resulted in a controversy in 1997 (the PIRMA case) when the People's Initiative for Reforms, Modernization and Action (PIRMA) filed with the Commission on Elections a "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, by People's Initiative", seeking, among others, to lift the term limit of the presidency. As stated earlier, the Supreme Court ruled that the basis for the people's initiative, R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned (*Santiago v. COMELEC, supra*). Thus, the move to lift the term limit of the President was stalled.

The rules on disclosure of illness in case of incapacity by the President as contained in Sections 11 and 12 of Article VII were originally statutory (Batas Blg. 231 (1982) entitled: "An Act to Implement the Constitutional Provisions on Presidential Succession, Appropriating Funds Therefor, and for Other Purposes") but now transferred to the Constitution (I. Cruz, *supra* at p. 181). The rules provide:

> SECTION 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as the President; otherwise, the President shall continue exercising the powers and duties of his office.

SECTION 12. In case of serious illness of the President, the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Section 11 deals with incapacity to perform the functions of the Presidency while Section 12 presumably deals with serious illness not incapacitating because access to him is not denied to cabinet members in charge of the national security and foreign relations. The access is to allow the President to make the important decisions in those areas of government suggesting a situation where the President is still able. The purpose of the right of the public to be informed of the state of the health of the President in case of serious illness is to guarantee such people's right, contrary to secretive practice in totalitarian governments (J. Bernas, *supra* at pp. 750-1).

Another limitation on the presidency is provided by Section 13 prohibiting the President, Vice-President, the Members of the Cabinet, and their deputies or assistants from holding any other office or employment during their tenure, unless allowed by the Constitution as when the Secretary of Justice sits as *ex officio* Chairman of the Judicial and Bar Council (CONST, art. VIII, sec. 8(1)) and the Vice-President is appointed as a member of the cabinet (CONST, art. VII, sec. 3, where such appointment needs no confirmation). The said section also prohibits the aforementioned officials from directly or indirectly practicing any other profession, participating in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporations or their subsidiaries. They are also enjoined to strictly avoid conflict of interest in the conduct of their office. The prohibition against participation in a contract with the government extends to a member of family corporation which has dealings with the government (*Doromal v. Sandiganbayan*, 177 SCRA 354 (1989) as cited in J. Bernas, *supra* at p. 756).

These prohibitions are in line with the principle that a public office is a public trust (CONST, art. XI, sec. 1) and should not be abused for personal advantage (I. Cruz, *supra* at p. 184). The purpose of the prohibitions is two-fold: (1) to avoid conflict of interest and (2) to force the officials to devote full time to their official duties (J. Bernas, *supra* at p. 756). The prohibitions also serve to discontinue the lucrative practice of Cabinet members occupying seats in the boards of directors of affluent corporations owned or controlled by the government from which they derived substantial income in addition to their regular salaries (I. Cruz, *supra* at p. 185).

The second paragraph of Section 13 also proscribes the appointment of the spouse and relatives by consanguinity or affinity within the fourth civil degree of the President to be Members of Constitutional Commission, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries. This provision is

intended as an anti-nepotism provision, previously prohibited only by statute (Pres. Decree No. 807, sec. 49 [1975]).

Perhaps the most significant limitation imposed on the President lies in the rewording of Section 18. This section, which contains the military power of the President, reposes tremendous and extraordinary authority in the President. As now worded, it provides:

> SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
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> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.
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> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
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> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or the legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
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> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The military power enables the President to: (1) command all the armed forces of the Philippines and call the armed forces to prevent or suppress lawless violence in cases of invasion or rebellion; (2) suspend the privilege of the writ of *habeas corpus*; and (3) declare martial law (I. Cruz, *supra* at p. 205). Under the 1987 Constitution, (1) the grounds for the imposition of martial law and suspension of the privilege of the writ of *habeas corpus* are narrowed, (2) the discretion of the President is limited and it is put under review powers of both Congress and the Supreme Court, and (3) the bulk of the martial law jurisprudence that had developed under President Marcos was rejected (J. Bernas, *supra* at p. 802). More specifically the following significant changes in the original authority of the commander-in-chief has been provided in the new Constitution (*supra* at p. 213):

1. He may call out the armed forces to prevent or suppress *lawless violence, invasion* or *rebellion* only.
2. The grounds for the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law are now limited only to *invasion* or *rebellion.*
3. The duration of such suspension or proclamation shall not exceed *sixty days*, following which it shall be automatically lifted.
4. Within *forty-eight hours* after such suspension or proclamation, the President shall personally or in writing report his action to the Congress. If not in session, Congress must convene within 24 hours.
5. The Congress may then, by a *majority vote of all its members voting jointly*, revoke his action. The revocation may not be set aside by the President.
6. By the same vote and in the same manner, the Congress may, upon initiative of the President, extend the suspension or proclamation for a period to be determined by the Congress if the invasion or rebellion shall continue and the public safety requires the extension.
7. The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political

question and may be raised in an appropriate proceeding by *any* citizen. Moreover, the Supreme Court must decide the challenge within *thirty days* from the time it is filed.

8. Martial law does not automatically suspend the privilege of the writ of *habeas corpus* or the operation of the Constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdiction over civilians where the civil courts are functioning.

9. The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of *rebellion or offenses inherent in or directly connected with invasion*.

10. Any person arrested for such offense must be judicially charged therewith within *three days*. Otherwise, he shall be released.

The rule that military courts do not supplant the civil courts adopts the “open court” rule in *Duncan v. Kahanamoku* (327 U.S. 304 [1946]) and rejects the contrary rule first enunciated in *Aquino, Jr. v. Military Commission No. 2* (63 SCRA 546 [1975]). In the latter case the Supreme Court ruled that Presidential Decree No. 39 issued by President Marcos providing for the "Rules Governing the Creation, Composition, Jurisdiction, Procedure and Other Matters Relevant to Military Tribunals" which in turn vested military tribunals with jurisdiction "exclusive of the civil courts", among others, over crimes against public order, violations of the Anti-Subversion Act, violations of the laws on firearms, and other crimes which, in the face of the emergency, are directly related to the quelling of the rebellion and preservation of the safety and security of the Republic, were within the President’s authority to promulgate, since it is recognized that the incumbent President, under paragraphs 1 and 2 of Section 3 of Article XVII of the new Constitution, had the authority to promulgate proclamations, orders and decrees during the period of martial law.

III. The Judicial Department

The role of the judiciary in a democracy is best summed up as follows (I. Cruz, *supra* at p. 228):

> "Although holding neither purse nor sword, the judiciary is an indispensable department of every democratic government. It is trite to say that courts of justice are the bastion of the rights and liberties of the people. Nevertheless, it cannot be repeated too often that the lifeblood of every libertarian regime is found in the vitality of its judicial system.
>
> Timid and corrupt judges will sap the vigor of popular government; on the other hand, a free and fearless judiciary will give it strength, endurance and stability. There is no doubt that the success of the Republic will depend, in the last analysis, upon the effectiveness of the courts in upholding the majesty of justice and the principle that ours is a government of laws and not of men.
>
> Lacking this capacity, judges become no more than lackeys of the political departments cowed to do their bidding or instruments of their own interests scheming for self-aggrandizement. Without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice."

Cognizant of the important role of the judiciary in a tripartite system of democratic government, the 1987 Constitution introduced provisions aimed at strengthening the independence of the judiciary *vis-à-vis* the legislative and the executive departments who hold the powers of the purse and the sword, respectively.

Foremost of the changes introduced by the new Constitution in the judicial department is the addition to the judicial power of the determination of grave abuse of discretion. As now worded, Section 1 of Article VIII provides:

> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to

lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The first part of the definition of judicial power represents the traditional concept of judicial power, involving the settlement of conflicting rights as conferred by law. The second part represents a broadening of judicial power enabling courts of justice to review what previously was forbidden territory, to wit, the discretion of the political departments of the government (*Ibid* at p. 232). Of course, while this addition was introduced due to the frequency the Supreme Court resorts to the *political question* doctrine during the period of martial law this provision does not do away with the doctrine (J. Bernas, *supra* at p. 831). When a case refers to questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government, then it is a political question and the courts will not take cognizance of the case (*Tañada v. Cuenco*, 103 Phil. 1051 [1957]).

Moreover, not every abuse of discretion can be reviewed by the courts. It has to be a grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (*Sinon v. Civil Service Commission*, 215 SCRA 410 [1992]).

While Section 2 grants the authority to Congress to define, prescribe, and apportion the jurisdiction of various courts, it cannot deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5. This section provides:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Corollarily, it cannot pass a law increasing the appellate jurisdiction of the Supreme Court without its advice and concurrence (CONST, art. VI, sec. 30). As the authority to create lower courts also includes the authority to abolish courts, Congress cannot do the latter as a subterfuge for removing unwanted judges. Section 2 also provides that no law shall be passed reorganizing the Judiciary when it undermines the security of tenure of the members of the judiciary.

One of the more important provisions of the 1987 Constitution to ensure the independence of the judiciary is the grant of fiscal autonomy. Section 3 of Article VIII states that "(T)he Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary

may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released. This provision is principally intended to remove the courts from the mercy and caprice, not to say vindictiveness, of the legislature when it considers the general appropriations bill (I. Cruz, *supra* at p. 237). The Supreme Court explained fiscal autonomy in the case of *Bengzon v. Drilon* (208 SCRA 133 [1992]) thus:

> "As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and play plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision."

Finally, to remove as much as possible the influence of partisan politics in the matter of judicial appointments owing to the unfortunate experience in the past when persons without credentials except their political affiliation and loyalty were able to infiltrate and deteriorate the judiciary (I. Cruz, *supra* at p. 235), the 1987 Constitution introduced an innovation by the creation of the Judicial and Bar Council, which takes the

place of the Commission on Appointments in matters of judicial appointments. This is a response to the suggestion of practicing lawyers because in the past [when appointment of judges had to be confirmed by the Commission on Appointments] judges had to kowtow to members of the legislative body to get an appointment or at least to see the Chairman of the Committee on the Judiciary in Congress and request support for the confirmation of their appointment (J. Bernas, *supra* at p. 881). The Council recommends to the President appointees to the Judiciary, and from these nominees the President appoints the judges without need for confirmation by a Commission on Appointments (*Ibid).* Article VIII provides:

> SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
>
> (2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
>
> (3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.
>
> (4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
>
> (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

While the judges appointed by the President from those nominated by the Judicial and Bar Council need no confirmation from the Commission on Appointments, it is readily seen that the appointment of the regular members of the Council are still subject to the consent of the Commission on Appointment (CONST, art. VIII, sec. 8(2)). This provision

allows a political check on the President's appointing authority which otherwise would be the sole political influence on judicial appointments (J. Bernas, *supra* at pp. 881-2).

The appointment of judges should also be in consonance with Section 12, providing that "(T)he Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions." Judges may not be appointed in an acting or temporary capacity as this undermines the independence of the judiciary, as temporary appointments are essentially revocable at will (I. Cruz, *supra* at p. 237).

Summary

As a reaction to the abuse of executive power by the former President Marcos, the 1987 Constitution added new provisions to both the Legislative and Judicial Departments as checks to executive power, knowing fully well the vastness of the plenary executive power reposed in only one person, the President, in contrast to the collegial bodies in the two other departments. Thus, the 1987 Constitution recognized once more Congress as the repository of democracy and has expanded the scope of judicial power to check on any governmental act as to grave abuse of discretion. Moreover, the 1987 Constitution has also limited the powers of the President by imposing express constitutional limitations, as for instance on the martial law powers in Sec. 18 of Article VII.

But perhaps the more significant additions in the 1987 Constitution in terms of democratizing governmental powers are the provisions allowing for direct people participation. While the structure of government in the Philippines is that of representative democracy, still, the people, from which all governmental authority emanate, must be able to exercise direct participation in governance to emphasize their significance in the country's development. The people have been given the power to amend the Constitution or any statutory enactment for that matter, question the sufficiency of the factual basis of the declaration of martial law or the suspension of the writ of habeas corpus, or form party-list groups to run for Congress in the case of sectoral groups.

However, while the 1987 Constitution has expressly placed new provisions aimed at democratization, it remains to be seen how the intent to democratize by the framers of the 1987 Constitution will be carried out. Congress has to pass the essential adequate enabling law to allow the people to amend the Constitution and the people have to be conscious of their increasing role in expressing their collective will, including participation through voting of party-list representatives. Only then can it be said that the 1987 Constitution has successfully democratized governmental powers.

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