

DISSENT AND LEADERSHIP¹

You have asked me to talk about the Senate, but it is part of a whole: Congress. And it is the role of that whole, and not just its constituent parts, that should interest us today. After all, August is a special month. Two of our greatest presidents, one a long-time senator, the other, briefly a representative, were born in this month. And while we recall Quezon and Magsaysay's births, we also remember a martyrdom: that of Ninoy Aquino, whose death anniversary we recall today. All served in Congress; and all made their names, defending our people's liberty in the face of executive hostility, whether foreign or home grown.

The story of the Filipino nation and people is inextricably intertwined with their love-hate relationship with their legislatures. Under Spain, moderate Filipino reformists pined for representation in the Spanish Cortes. When they threw off Spanish rule, they nonetheless modeled their bourgeois congress in Malolos after it.

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Under America, we aspired, first, for representation in a lower house and then flexed our political muscles by adopting a bicameral legislature to counteract the American executive. These legislatures, we loved. Tyrant rulers from the Japanese to Ferdinand Marcos, who was also corrupt, and corrupt but genuinely democratic rulers have used rubberstamp national assemblies to decorate their regimes and advance their personal or partisan interests; these legislatures we hated. And that about accounts for all the legislatures we have had.

We have measured our democratic maturity by the transformation of a unicameral assembly under the Commonwealth into the bicameral Congress of our unfortunate Republic: legislatures we loved to deride yet sought to restore when they vanished because the redeeming few unquestionably patriotic leaders we have had came from there. Benigno Aquino, Jr. and Jose Diokno, to name just the most recent.

Conquerors and constitutions have come and gone, and yet the ultimate aspiration of the Filipino people remains the same: to express their nationhood by means of a legislature, which betrays instinctively correct sense of checks and balance and John Locke's assertion that the first principle of political organization is that no man may be judge in his cause. Put simply no one can be trusted to be judge and jury or president and congress all in one.

The catalog of legislatures, for those who didn't pay attention to their teachers in school, may be given short shrift.

Token representation in foreign legislatures, twice: in the Spanish Cortes (when liberal and anticlerical forces held brief sway in Spain) and in the United States Congress (where we could send resident commissioners to the lower house to talk but not vote from 1907 to 1946).

Appointive legislatures thrice: the Malolos Congress; the Philippine Commission from 1901 to 1916 (with an elective lower house, called the Philippine Assembly, from 1907-1916); and during the Japanese occupation from 1943-44.

We have experienced unicameralism twice, under the Commonwealth from 1935 to 1941 and during martial law with the farcical Batasan Pambansa from 1978-86, where our politicians got the first and addictive taste of parliamentarism nonetheless; certainly its most flavorful feature which is the combination of the appropriation and the spending power. In other words, they could write their own shopping list and spend our money as they pleased though their pleasure was somewhat restrained by an overbearing president-for-life who used the prime minister out of parliament as his footstool.

And we have had bicameral legislatures thrice: from 1916-1935; from 1946 to 1972; and from 1987 to the present—where the lower house is aptly that and almost consistently ignored and derided, and the upper house is aptly uppity, self-serving, gratuitously obstructionist, and thickly larded.

The typical pork barrel in the House is some P65 million pesos yearly in projects, not all of which are funded and therefore never materialize. In the Senate it is P200 million, pretty well good as cash because the Budget department dares not cross them. It is easier to

get a majority out of 24 senators to frustrate the president's agenda than to achieve it among of 220 members of the House desperate for any crumbs that will ensure their election or that of their spouses or children. The senators are also entitled each to an indeterminate amount for nearly unlimited staff, so that each senator can recreate or pretend to recreate in his office the tenured staff support that exists for and must be shared by the entire House of Representatives—in short, a cash cow and mangy dog. As we all know, neither surfeit or hunger are conducive to clear thought and rational act.

The common thread that binds these legislatures together, and ties them closely to our history, is the Filipino propensity to treat the executive power as suspiciously alien and prone to do harm, while holding our representatives in contempt as ever inclined to debasement while holding them up to the highest duty of checking executive abuse, which they cannot do without enjoying a measure of public support. Which, it must be said, they frequently do not deserve.

Thus Malolos congress was about the desire to trim down the powers of the dictator-president Aguinaldo; the Philippine Commission was rocked by the efforts of Trinidad H. Pardo de Tavera to play a role as “people’s advocate,” a role that would be played in later years by Osmena, then Quezon, and later, Rodriguez as leaders; and by Sumulong, Recto, and Aquino, Sr., as dissenters.

In her essay *“Origins of National Politics,”* historian Ruby Paredes has this to say of Trinidad H. Pardo de Tavera: “In Manila’s colonial politics, [he] was better suited than any other Filipino for the role of people’s advocate.” In response to the backpedaling of Taft’s successor, Governor-General Luke Wright, who tried to slow down the progress of Filipino participation in colonial affairs, and who consulted the Federalistas in government less and less, Paredes writes that De Tavera was “thrust into the center of the controversy, a position which, by virtue of personality and temperament, he held well. As the highest-ranking Filipino official, Pardo de Tavera’s statements were newsworthy and he used the media exposure to good effect. Described in later years as a man who was ‘not afraid to be quoted,’ Pardo de Tavera indeed shirked none of the challenges of the Wright administration...”

In Pardo de Tavera's own words, "I have not accepted American sovereignty for the pleasure of being under the dominion of a foreign nation, but because I thought that such a dominion was necessary to educate us in self-government." De Tavera's would be replaced by Sergio Osmena who would then be replaced by Manuel L. Quezon.

In his day, Quezon was said to have been popular with the young. His political style was innovative. He was considered modern. The *Philippines Free Press* of the era described how Osmena, in his office in the Ayuntamiento, entertained members of the press by offering them light wines and biscuits, in the best tradition of Spanish hospitality and taste. Quezon, in his office in the Intendencia, served sandwiches and beer to the members of the press. In many ways Quezon's political style—garrulous, intimate, relaxed—was in itself an innovation.

By contrast, Osmena was criticized for being aloof, detached, formal, which in itself was not bad, following, after all, the rules of decorum of the 19th century. The only problem was that this was already the 20th century. And while Osmena harked back to the best

things of the century that saw his birth, his exact contemporary Quezon knew that the times were changing, and that with the introduction of the New American Order—and its rambunctious governance—a change in leadership style was advantageous and inevitable. That is why he went to the best school for learning politics, American-style: The Congress of the United States.

Since Quezon's generation had to secure their goal of national independence in a game whose rules were drawn up and whose play was refereed by Americans, the logical thing was for Filipinos to learn how to play American-style, and play it well. By the time he returned to the Philippines, in 1916, he had mastered American bluster and wheeling-and-dealing. He immediately set out to practice what he learned. In the process, he recast the political landscape. A piece of trivia, to illustrate the point: It was not until 1922 that English began to be used in the Philippine Legislature—the year that Quezon emerged as the No. 1 political leader. He had learned his lessons in the US Congress well.

This was real politics. Not the languid acts of a “directing class,” which is what Osmena wanted. Rather, a group of gentlemen leading the nation according to an aristocratic ethos. This was sweaty, rough, ruthless politics. The politics of the poker table, of rooms thick with cigar smoke. Of ward leaders and party machines. This was politics as modern as the inventions revolutionizing the age: wireless radio, airplanes. This was politics geared towards winning and winning, again and again, through the systematic demolition of one’s opponents and the depletion of their resources because every victory made the next one so much easier. Machine politics, Tammany Hall politics, this was the politics that gave Quezon a nickname among American friends. Tammany Hall sachems nicknamed him “Casey.” The politics of the speakeasy and the Jazz Age. The youth loved him. My two grandfathers, too. He fought hard, but, as Recto immortally observed, comparing Quezon to an eagle, “he does not stoop to eat carrion.”

But after the war, it was *passé*. In the United States alone, politics changed with the era of Franklin D. Roosevelt: the era of big local kingpins gave way to the power of the party with its national (no longer merely a group of local alliances) constituency and

leadership. In the Philippines, the opposition called Young Philippines, with its leaders Vinzons and Tolentino- begun questioning Quezon's Big Chief style even before the war. The Japanese Occupation, and the rise of alternative movements, such as the Huks, graphically revealed the limitations and abuses of the pre-war "*tayo-tayo*" system. Too many people insisted on being among the "*tayo*" of "*tayo-tayo*," as to produce too many chiefs and too few Indians.

The prophets of the new politics, the politics of direct appeal to the public—and not just the voters anyone and anything, even those too young to vote in the hope they might persuade their elders. It was revolutionary in the French sense as calling for mass mobilization, indiscriminate recruitment and collective self-perpetuating ignorance.

This style would be exemplified by Ninoy Aquino first, because even the popular Ramon Magsaysay exhibited a certain restraint and decorum. The office then still made the man, while Marcos was already the maker of his own morals and by Ninoy Aquino's it was clear that the man would be making the office whatever it became, even from opposition for Ninoy's savage and unanswerable attacks on the ambitious Marcos largely inspired the latter to become more

conspiratorial and illegal in his reaction. A style of presidential governance that would be carried over to all his successors.

Our legislatures have always been about two things: **leadership and dissent**: the former surreptitious, clandestine, working always behind the scenes because often for no good; the latter always out in the open, exuberant, eloquent, exaggerated, destructive.

Referring to the opposition in Congress during his time, Claro M. Recto observed that *“After its catastrophic defeat in two consecutive elections it disintegrated completely and the members of that opposition are now suffering from acute leukemia, the red corpuscles in their blood being eaten up by leucocytes and have placed themselves under the wing or rather under the shadow of Malacanang for crumbs of patronage and for protection against persecution by their [party] opponents in their respective districts.”*

What Recto must have meant was anemia because leukemia is fatal and mercifully puts an early end to its victim but an anemic goes on and on, helpless and useless. And it is anemia that has characterized Philippine legislatures which have been worthless to their friends, harmless to their enemies and faithless to the public it is sworn to serve. On the other hand, a comparative Viagra has best

characterized the executive, including such pallid administrations as that of Roxas. **This serves to remind us that we must be thankful to the line of great dissenters, most of them from the Senate, who managed to single-handedly invigorate our politics.** This line of dissenters—Juan Sumulong, Wenceslao Q. Vinzons, Claro M. Recto, Lorenzo Tanada, Jose W. Diokno, Jovito Salonga, Ninoy Aquino—links our political past with the present. Each of these men served the cause of democracy well, which is basically getting the other side heard if not heeded.

Few today remember Don Juan Sumulong, except perhaps a few political genealogists who have noted that he is the maternal grandfather of Cory Aquino, thanks to whom a gaggle of his relatives with not a particle of resemblance to the original managed to get elected after Edsa. While the sudden crush of relations essentially harmless to our political life is yet another proof of how dynastic politics need not worry us because it is a problem with its own solution over time, what is important to remember is the original Juan Sumulong's record as an oppositionist. It was breathtaking.

He was, together with Recto, one of the pillars of the Democrata party, the perennial opposition party during the 1920s. Under his leadership the Democratas twice nearly toppled the Nacionalista party from its perennial preeminence through shrewd alliances with one or the other of the factions that regularly split the NP. When finally the Nacionalistas managed to swallow the Democrata party, Sumulong chose to stand alone, bitterly criticizing the reunification of the Nacionalistas after the acceptance of the Tydings-MacDuffie Act. The Democrats having vanished, Sumulong warned that the creation of a monolithic, unchallenged administration party could only lead to dictatorship. He was wrong by only forty years.

During the Commonwealth, when even the great Recto was happy to be in the ranks of the dominant Nacionalistas, Wenceslao Q. Vinzons and a small group of young leaders—not all of whom stuck to their youthful idealism—spoke up in spirited opposition; later on he would give his life for his country during the war.

In the first two decades of independence, Recto once more played the role he relished and in which he was happiest: the great dissenter. He roused the dormant nationalism of a people grown pudgy with Coca-Cola culture, left an incalculable legacy of intellectual probity and strength. A legacy continued by Lorenzo Tanada, who, though he never pandered to the popular taste, was repeatedly returned by his people to the Senate until, on the eve of martial law, he chose to retire, only to work even more tirelessly against the dictatorship. A younger voice joined Tanada's in the senate: Jose W. Diokno. He too scorned to flatter oligarchs for their support or pander to the popular taste in politics, and stood defiant to the end against a rising dictatorship. After the democratic restoration, Jovito Salonga stood up for principle, finally achieved, before the astonished eyes of the old man Tanada, who had been brought in a wheelchair into the Senate to witness the event, the removal of the US bases. They remain the lodestars of the Senate up to today.

The fact that dissenters, espousing difficult causes, have successfully courted the mandate of the people speaks well of us. For while quality is hard to find, and perforce we must frequently settle for harmless mediocrity as the lesser evil, we as a people have shown that we recognize and reward quality when we see it.

Another crucial thing to understand about Congress is that it violates the physical law that nature abhors a vacuum. Indeed, US legislatures waxed powerful with wan presidents but in the Philippine Congress a political vacuum in the executive merely triggers an adjournment as congressmen make a beeline for the exit.

The 1935 Constitution envisioned a strong presidency in keeping with the personality of Quezon, so the presumed capacity of the legislature to check that power was inherent in the framework established. But capacity is one thing and inclination quite another.

To be sure, the legislature would increase its influence over national affairs vis-a-vis the executive in succeeding administrations but never enough to overshadow the powerful office which, ultimately, always called the shots. This was true even with regard to the power of the purse, which is the sole and defining prerogative of Congress, the lower house in particular.

Under Quezon, the president had virtual *carte blanche* to move funds around in the teeth of declared items of appropriation; starting with Quirino, who had Quezon's authoritarian streak but none of his political agility, the Congress began reasserting its traditional prerogative to fix budgets and set expenditures. It even passed a law putting a cap on the national borrowings so that, when the comparable societies of Latin America would plunge periodically into bankruptcy the Philippine economy moved steadily—never spectacularly but always steadily.

When Marcos became president but before he made himself dictator, he perfected the juggling of congressional appropriations and the use of pork barrel funds as a means for congressional control. In short, it was a kind of judo where he used the very power of his

office's traditional opponent, against itself. In short, he was buying the politicians with their own money, if Congress may be said to own the taxes that people pay—which is pretty much how they treat them.

It got even easier when Marcos declared martial law and constituted himself as a government of one, combining the executive and legislative powers in his person, while adopting the Supreme Court as his new rubberstamp. He abolished all limits on appropriations and spending, basically giving himself the authority to spend on whatever he pleased and as much as he wanted—an authority he exercised to the hilt.

The bisection of the Congress into an upper and lower house only slowed but did little else to stop the growth of executive power to authoritarian dimensions. And the impetus was not a sense of senatorial duty to maintain the principle of checks and balance but personal ambition, with the Senate convinced that it was the School of Presidents where at least one graduate would be president in time.

The most logical thing of course was for the senators to conspire to enhance the office that one of them would inevitably achieve. But most senators were convinced that, while one of them would certainly be president, the rest of them perforce would not and

therefore took care to keep that office within some sort of limit. And that was the only friction that the growth of presidential power experienced.

Some say that it was the country's bad luck to have a straw man, Gil Puyat, at the helm of the Senate when martial law was declared. This is unfair to a decent individual because it was not the weakness of its titular head that paralyzed the Senate but the brazenness of the assault on democracy that froze the senators in their shoes and left them flaccid thereafter.

Although frequently outmaneuvered by the executive, an appropriate deference was always paid to the Senate. But never had the senatorial class been humiliated as it was with Marcos when he sent soldiers to simply nail its doors shut and then proceeded to arrest—not all the senators for he knew their quality or lack of it—but only two: Jose Diokno and Ninoy Aquino. It was a master psychological stroke, striking individual terror and collective insult to the rest of the chamber. The House of Representatives was simply not hear from again, though the Speaker of the House, Jose Laurel, went home to pack his bags in readiness to be taken away to detention. No one came for him. Another masterstroke.

Marcos then proceeded to threaten though mostly to cajole and corrupt the members of a sitting constitutional convention into drafting a new constitution that he had already written down and which imparted to him absolute power while granting to the legislature the handsomest perks for offices stripped of any real role in political life.

He promised that those who voted for the Palace-dictated constitution would be automatic members of the legislature it created in caricature. Yet, when the vast majority did just that, he abolished it with the most expressive show of contempt and called for elections to a new but still rubberstamp parliament.

Essentially Marcos wiped the floor with Congress, using it as a dishrag while he took upon himself the serious work of lawmaking, particularly for his, his wife's and their cronies' benefit. To this day, the republic's finances continue to be compromised by the obligation to repay what they stole and wasted.

That left only the Supreme Court as the lone self-respecting institution separate from an executive with no sense of limits or of shame.

Although described by one US authority as “the least dangerous branch,” because it cannot act on its own initiative nor does it the physical power to effect change, the highest court can stop the other two branches dead in their legitimate tracks if it chose. They could ignore the Court, of course, but they would proceed thenceforth with little or no legitimacy—and legitimacy is what government is all about.

In the world’s most populous democracy, a chief executive had declared emergency government and given herself extraordinary powers—in effect, martial law—but the Indian Supreme Court ruled, in a decision dripping with legal erudition, that it was unconstitutional. Indira Gandhi backed off and restored democracy.

The Philippine Supreme Court did the opposite. It could have, at the very least, refused to rule on the issue of martial law, on the basis of the specious adage that when the guns speak, the laws fall silent—which was true but did not absolve the Court from doing its duty to issue a ruling. Instead, it went a step further and validated martial law. And it would do so repeatedly so that, as one jurist put it, martial law was erected stone by stone by the decisions of a craven Supreme Court. Marcos declared martial law but it was the Court that said it was right.

There had been signs that the Court would rule in that fashion, not least its complete lack of fortitude in upholding the president's suspension of the writ of habeas corpus after the Plaza Miranda bombing of which he was, at the time, believed to be the author. Like the proverbial first kiss on a first date, which has been compared to the first olive out of a tight bottle, once gotten, the rest follow first with increasing ease and then with total abandon.

Congress never recovered from the humiliation of its complete dissolution. To be sure, it redeemed itself, at least in appearance, in 1987 and again in 1989, when it convened to condemn a military coup still in progress. The 1989 coup attempt showed every sign of succeeding until the last minute. But no one doubts that, if a coup had succeeded, the Congress would have continued in session and legitimized the junta.

The year 2000 seemed like a better one for the proposition of a revitalized Congress in the restored democracy. But the impeachment of a lax chief executive hailed before Congress with his hand still inside the cookie jar actually failed, although narrowly. It deserved no cigar and got none. The President fled the Palace but no thanks to Congress but rather to a big, noisy but not altogether representative

popular uprising best remembered for its loud rock music. The fall of the President may have been caused less by real political pressure than a hearing not to mention a comprehension problem on his part that might have mistaken shrill song for screaming outrage.

Since 2001, the House has been a lapdog, the Senate, a fierce guardian of our democracy; yet both continue to work together –in Congress assembled- to pass essential legislation. And some pretty unessential laws, too, such as the one that made this formerly sacred day, August 21, a nothing day.

The story of Congress, then, is about our legislatures being the personification of the Filipino mistrust of the executive power and the desire to curb its power, combined with our unsurprised discovery that each new congress never fits the bill. Yet we continue to want it, as a symbolic foil to the country's real ruler in every aspect of the national life. If we cannot have a Congress that will guard our liberties in its entirety, then we can rely on the Senate doing both chambers' work. And so, we must have a legislature, but we inherently distrust the idea of unicameralism. The reason is that, if we cannot trust the Congress to come up with good laws or even check the executive, we trust the executive even less to make the laws

himself—as Marcos did when he combined both powers in his person and robbed the country blind.

That Cory Aquino continued this arrangement through her first year and a half in power—ruling as a benevolent dictator with astonishing self-restraint and evident success, producing a remarkably fine yet comprehensive body of important legislation—elicited no public regret but rather a collective sigh of relief when she surrendered the power entirely back to a newly elected congress.

Indeed congress, like the famous definition of democracy as the worst form of government except for all the others, may be described in the public perception as democracy's worst institution except for the other two.