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**Welfare and Nationalism in the
1935 Philippine Constitution**

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ABSTRACT

The framers of the 1935 constitution of the Philippines were conscious that they were introducing novelties in the form of nationality requirements and a strong executive. Previous discussions of nationality requirements in the constitution have taken these as self-evident expressions of nationalism. Explanations of the strong executive branch tend to trace it to a desire to emulate the colonial government, or simple pressure from an ambitious Quezon. Evidence from the deliberations shows however that in both cases the historical context and the ideologies of the strong state ascendant at that time, represented by socialism and fascism, played a role in the deliberations and ultimate outcomes.

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1. Introduction

The convention that drafted the 1935 constitution of the Philippines was well aware that the document they completed contained what its president, Claro M. Recto, would call certain "innovations". Two of these are examined in this paper, namely, its nationalist provisions, particularly those pertaining to the economy, and the strong executive branch. Both would play decisive roles in the country's later history. The strong executive would be the basis for the declaration of martial rule, while the economic provisions would be later viewed as hindrances to a closer integration of the country with the world economy, spawning periodic attempts to change them (the latter themselves precipitating their own political crises). This paper explicates the contemporary intellectual and social context that made these provisions appear sensible at the time, and points out how historical and economic circumstances have overtaken them since.

2. Nationality requirements and patrimony

The political reality the delegates to the constitutional convention needed to confront was the nature of the independence to be obtained from the U.S. They needed to tread carefully between their obligations to the unfinished nationalist agenda carried over from the "two revolutions", on the one hand, and the realisation that this particular independence could be secured only with the consent of and in consonance with the interests of the occupying power.

Economic nationalism at the time of the convention was largely expressed in a single type of measure, though applied in different contexts, i.e. *nationality requirements*. Such a policy was, of course, the complete opposite of the "national treatment" that is the current ideal under WTO rules. Proposals were made for nationality requirements to be applied in several areas of the economy, including labour, retail trade, land ownership, public utilities, and natural resources, particularly mines. In the end, nationality requirements on land ownership, public utilities, and natural resources were included, while those on labour, retail trade, and cabotage were rejected.

Retail trade nationalisation

Although it was finally rejected, the proposal introduced by the committee on commerce proposing to limit the retail trade to Filipinos and U.S. citizens is worth discussing for two reasons: first, its proponent, Salvador Araneta, was the most vocal advocate of nationalism throughout the convention's duration; second, retail-trade nationalisation was ultimately realised through legislation in 1957, only to be reversed finally with the retail-trade liberalisation law of 1999. The discussions surrounding the issue were significant in laying down the theoretical basis for nationality requirements and they help elucidate the nationalist argument generally. Retail trade and labour were areas where the most vocal

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nationalism could be expressed most freely and purely, since these were not areas of interest to Americans and were occupied by the less controversial Chinese and Japanese. Nationality requirements in retail trade were clearly directed against ethnic Chinese and Japanese which, the committee on commerce contended, controlled 50 percent and 25 percent of retail trade, respectively, while Filipinos were in control of only 20 percent. (See the entire committee report reproduced in Aruego [1938:907-915].)

The recommendations of the committee on commerce justifying nationality requirements fall under three basic arguments. The first was *unfair competition* owing to the fact that "[t]he standard of living of some of the foreign competitors is very much lower than that of the Filipino." At bottom, this was a form of the "pauper-labour" argument, or what would now be called "social-dumping", except that it applied to services and not goods, and to activities within a country rather than across borders. With good reason, current trade theory regards the "pauper-labour" argument as a fallacious objection to free trade, since the argument overlooks the fact that comparative advantage will always allow a country to export some goods. The argument admittedly retains some cogency, however, when applied to competition *within* a single country. For absolute advantage, not comparative, tends to rule when factor mobility is free and both wages and price are quoted in a single currency. In the case of goods-dumping, the relevant measure would be an anti-dumping duty. Applied to a service such as the retail trade, restrictions would have to take the form of nationality requirements, or in a more general extreme form, deportation or migration restriction¹.

A second argument was a general notion that foreigners had obtained what would now be called *first-mover advantages* and possible *network economies* in this particular sector: "They have very much greater business experience"; "their present advantageous position has been in their command for so long already"; "they have entrenched themselves behind an airtight system of financing and credit, cooperative purchasing, interlocking ownership, etc., [so] that a body of poorly organized or unorganized Filipino retailers cannot possibly compete fairly against them"; "they receive preferential treatments (sic) from big importers who are entirely foreigners, thereby enabling them to obtain merchandise at very much lower prices than the Filipinos can ever hope to obtain under the present circumstances."

The underlying economic idea, expressed in current terms, appears to have been that *external economies*² through time had allowed the dominance of Chinese and Japanese retailers in the Philippines, leading to their then currently observed proficiency in that line of business. The nationalist argument held that while this efficiency was obtained historically, it was nonetheless unjustified because it was acquired under less than fair or equitable starting conditions for Filipinos. Implicitly, therefore, the proposal for nationality requirements was a refusal to accept the historical internal assignment of abilities and an attempt, as it were, to "turn back the clock". Analytically, such a proposal is no different from the "infant-industry" argument, except that in this context, one may more properly speak of "infant-entrepreneurs".

As the most prestigious expositor of the infant-industry argument, J. S. Mill [1848(1965):922], put it earlier:

The only case in which, on mere principles of political economy, protecting duties can be defensible, is when they are imposed temporarily (especially in a young and rising nation) in hopes of naturalizing a foreign industry. The superiority of one country over another in a branch

¹Indeed, this was the persuasive counter by M. Roxas to a proposal to "nationalise labour", that is, to require a certain minimum (75) percent of Filipino labour in each establishment [HR 1966b:61].

² The idea of trade based on external economies rather than on comparative advantage is an old one but has found its way into mainstream textbooks only fairly recently. The standard textbook by Krugman and Obstfeld, for example, includes it only in its third (1994) edition.

of production often arises only from having begun it sooner. There may be no inherent advantage on one part, or disadvantage on the other, but only a present superiority of acquired skill and experience. A country which has this skill and experience yet to acquire, may in other respects be better adapted. [Emphasis supplied.]

Carrying through the analogy with goods, if nationality requirements were to make sense on purely economic grounds, then the protectionist attempt should at least carry the prospect of ultimately becoming as efficient and even outdoing the foreigners. Again following the well-known Mill-Bastable test for an infant industry:

...[I]t is essential that the protection should be confined to cases in which there is good ground of assurance that the industry which it fosters will after a time be able to dispense with it; nor should the domestic producer be allowed to expect that it will be continued to them beyond the time necessary for a fair trial of what they are capable of accomplishing [Mill 1848(1965):922].

This condition was *assumed* as a matter of course by the proponents of nationality requirements: after all it followed almost immediately from nationalism itself, which asserted the intrinsic equality and worth of Filipinos, compared with other nations. To deny that, given *the same* historical opportunities, Filipinos could achieve the same efficiencies as Chinese and Japanese retailers was unthinkable, since it would have flown in the face of nationalism itself. In addition, there was more than enough evidence of the stirrings of Filipino entrepreneurship since the last half of the previous century (see, e.g., Legarda [1999].)

A third argument for retail-trade nationalisation was that leaving the business in the hands of foreigners resulted in a deliberate *discrimination against local goods* that indirectly stifled domestic industry, whose access to markets was thus lessened.³ Compared to the previous two arguments, this is a weaker one on purely economic terms. Theories of discrimination typically imply that one who holds a prejudice must manifest an irrationality for which one must pay a premium. In this context two possibilities may exist: (a) foreign products are superior, less expensive, or both, in which case foreign retailers are rational in preferring them to domestic products and no discrimination exists; or (b) domestic products are in fact superior in price, quality, or both, in which case foreign retailers are irrationally foregoing profit opportunities by refusing to carry them. One exception to this, however, admittedly occurs when network externalities or “lock-ins” encourage the dominance of products that would otherwise be inferior (as is alleged, for example, in the eventual dominance of the Wintel standard in computers). In retailing, for example, bulk-buying of an entire range of products from customary suppliers with tied credit may entail lower transactions costs than dealing with a more varied group of suppliers.

The downside to any infant-industry protection, of course, is the cost to consumers during the presumable learning period. Interestingly enough, this essential economic point, which was possible harm to the consumer through the restriction of competition, was brought out by [HR 1966b: 243-244], and one of its proponents admitted it would minimise competition. Still, a question of national welfare (*bienestar del país*) was regarded as being a value superior to individual consumers’ rights.

An interesting sidelight to this debate was the rationalisation by some that a constitutional reservation of economic areas for nationals was necessary owing precisely to an emerging

³ “The universal complaint of our local producers is that some of our foreign retailers do not wish to handle local products, absolutely preferring imported articles from their own countries.” (Report of the Committee on Commerce, reproduced in Aruego [1938:909].)

global trend for nondiscriminatory or "national" treatment of foreigners.⁴ The only credible exception to this, it was contended, was if national constitutions provided otherwise. A constitutional nationality restriction then was presented as a strategic reason to keep the country's options open, especially during international negotiations.

In the end, however, the issue of retail-trade nationalisation was not settled on its theoretical merits (notwithstanding that it seemed "rather popular" among the delegates [Aruego 1938:661]) but on legal and strategic grounds. To begin with, the motion was curious in that it proposed only to empower the national assembly to enact a law nationalising retail trade, rather directly nationalising the industry. (This curious proposal was done with an eye to evade its possible rejection by the US.⁵) Roxas, however, pointed to the superfluity of merely *allowing* the legislature to pass such a law, when it was almost self-evident that it could do so under "police powers" if national survival was at stake. Second, there was the purely pragmatic consideration that such a signal would arouse foreign hostility, especially Japan's. Third, the half-baked quality under which such proposals laboured was evident, since they would have given US citizens national treatment even after the Commonwealth and were conditional on the provision not being in conflict with any treaty of the US applicable to the Philippines.⁶ Finally, Quezon himself weighed in by calling a caucus to counsel against inclusion of provisions that might antagonize foreign powers [Aruego 1938:663], presumably referring to Japan.

Economic nationalism was understood at the time primarily as a reassignment of rights from foreigners to nationals (always with the understanding that the U.S. was the mighty exception). This was understood as part of the process of historical redress that could not be completed until full independence was secured, and indeed it was one of the major expectations from independence. It was a nationalist assertion that, given the same historical opportunities, Filipino entrepreneurs could attain the same efficiencies attained by foreigners, whose full flowering could not occur as long colonialism persisted.

⁴ "... que los extranjeros debían gozar de toda clase de derechos y de inmunidades y de la misma protección que reciben los nacionales, de tal manera que, bajo la Constitución que estamos escribiendo, los derechos individuales de los extranjeros tienen la misma consideración que los de los nacionales" [HB 1966b].

⁵ The proponent, S. Araneta, read a telegram that sought to assure the delegates that his proposal met with the support of Quezon himself and would not be objectionable to the US. The convention president Recto and other delegates, however, disputed this and suggested that Araneta had read Quezon's message selectively [HR 1966b: 239].

⁶ It was Sotto who drew the *ad absurdum* conclusion that knocked the wind out of the proposal: "Pero ¿que clase de nacionalismo es ése que reserva para americanos y filipinos el comercio al por menor hasta después del Commonwealth? ¿Donde está el nacionalismo? La enmienda reserva a americanos y filipinos el privilegio del comercio al por menor. La enmienda propuesta, como ya he dicho, reserva para americanos y filipinos ese privilegio, no solamente durante el Commonwealth sino hasta después del Commonwealth, o sea, cuando establezcamos nuestra propia República. Si esto es nacionalismo, me declaro no nacionalista. El privilegio podemos reservar a americanos y filipinos durante el Commonwealth, como una transacción con las circunstancias, como un *compromise* con la misma voluntad indiscutible de los hechos consumados; pero, después ¿por qué no vamos a excluir a los americanos si queremos efectivamente nacionalizar el comercio al por menor? Pero voy más allá todavía. Queremos nacionalizar el comercio al por menor; creemos que esto nos restaura simpatías ante los elementos extranjeros que vivan con nosotros en el país. ¿Por qué entonces rehuir tímidamente, miedosamente, la responsabilidad? Pongamos desde ahora como una cosa mandatoria en la Constitución, y no dejar la responsabilidad a la Asamblea Nacional, como nuevos Pilatos que nos lavamos anticipadamente las manos. Si que quiere un nacionalismo avanzado, rojo, pongamos en la Constitución ahora mismo un precepto mandatorio. Asumamos la responsabilidad y no la dejemos en otras manos..." [HR 1966b: 251].

At the same time, this view entailed a largely static conception of the economy as consisting primarily of well-defined niches of "patrimony", e.g., control of retail trade, control of land, or of industries, that could be easily occupied or reassigned without affecting productivity or output in the long run. The economic theory most congenial to this view is the dichotomy that J. S. Mill drew between laws of production and those of distribution, with the former attaining to the status of immutable physical laws and the latter being subject to human design. Following this line of thought, production may continue undisturbed even as redistribution and reallocation of rights takes place.

Natural resources and public utilities

The 1935 constitution's provisions on natural resources and public utilities put in place nationality requirements -- carried over in both the 1971 and 1986 constitutions -- that in more recent times have come to be regarded as obstacles to national development. The final provisions required that only citizens or corporations 60-percent of which were owned by Filipinos could be granted leases or concessions to exploit natural resources (Art. XII, sec. 1), operate public utilities (Art. XIII, sec. 8). Beyond nationality requirements, the constitution also asserted a strong state role by declaring natural resources to be state property and inalienable (Art. XII, sec. 1); subjecting the operation of public utilities to franchises of a definite term (50 years); and allowing the state to establish, operate, or even take over existing utilities (Art. XII, sec. 6).

The common 60 percent nationality requirement for these various areas was actually a compromise, since various committees had set different ceilings for foreign ownership. The committee on nationalisation had fixed it at 25 percent, as it was for agricultural estates. On the other hand, the public utilities committee set a ceiling of 50 percent. The Subcommittee of Seven then unified these at 40 percent maximum foreign ownership in the final draft [HR 1966b:113], although floor debates took place to push it back to 25 or even zero.

Two things distinguished this debate from those involving nationalisation of the retail trade and labour. First, there was a real and present U.S. interest in these areas, particularly mineral resources, agriculture plantations, and utilities. Second, these were areas where entry and successful development clearly required a significant amount of capital, which Filipino entrepreneurs were clearly in no position to provide.

Those who sought a higher nationality requirement⁷ admitted that Filipino capital was probably inadequate and too timid to undertake the development of natural resources, and that a high nationality requirement might discourage the entry of foreign capital. Nonetheless, this did not seem to be a matter of urgent concern, since the proponents appeared willing to trade off a possible under-exploitation or underdevelopment in the current period against the prospect of more certain control of the resource now and in the future.

GULLAS: ... I remember now that President Quezon once said that we must exploit the resources of this country but that we should do so with an eye only to the welfare of the future generations. In other words, the leaders of today are the trustees of the patrimony of our race.
...

I ask you to raise the standards not because we are hostile to foreign capitalists but because, as I said, we should provide for the welfare of our future.

⁷Among them, Paulino Gullas, Eusebio Lopez, and Nicolas Rafols [HR 1996b:135 -136, 141-143, and 144-145].

... We all realize that we need foreign capital here. Ours is a weak and poor country, but at the same time we must look forward not to the needs of the present but of the future [HR 1966b:136-137].

This is more evident in the following mock exchange [HR 1966b:145]:

LOCSIN: Entre Hawaii, debidamente explotada por el capital de fuera, y una isla de Luzón no tan plenamente desarrollada por falta de concurso excesivo del capital de fuera, ¿cuál prefería, o a cuál de los dos extremos daría su preferencia?

RAPOLS: Indublamete, daría preferencia a una isla apenas explotada pero ocupada solamente por nativos que pueden vivir suficientemente con sus productos, que a una isla explotada, con grandes fábricas, pero pertenecientes a extranjeros y en donde los naturales son simplemente unos extraños en su país. ... Indublamete, prefiero una casa de caña y nipa, que esté levantada en el propio solar, y ocupado por un nativo que un palacio donde los nativos no puedan entrar siquiera, sino verlo sólo desde fuera.

From this, after all, was but a small step to Quezon's aphorism about preferring a hell run by Filipinos to a heaven run by Americans. Though not always clearly formulated, the argument boiled down to the following: since Filipinos could not be sure that they would benefit sufficiently from these resources at the present time, it was felt better to leave them in the ground and "reserve" them for future generations. On purely economic grounds, of course, even this view could be justified under certain circumstances -- a social discount rate high enough and a foreign share large enough can make the "wait" option of leaving the resource unexploited for the meantime superior to immediate exploitation shared with foreigners.

Mainstream opinion nonetheless was represented by the draft of the subcommittee of seven, which sought to balance the nationalist demand for control with the need to retain and attract foreign interest and capital. Roxas [HR 1966b:134] argued that a 60-percent nationality requirement was sufficient to prevent foreigners from controlling vital activities.⁸ On the other hand, "we should not close the doors to external assistance in the form of capital which we need to exploit our natural resources" [own rough translation]. "Provided we can control these corporations, what objection is there to aid us [sic] in activities that we ourselves will manage?" (original English). In arguing against raising the nationality requirement to 75 percent or beyond, Singson Encarnación of the Subcommittee of Seven similarly submitted that indeed 51 percent was a sufficient guarantee that foreigners would not manipulate the industries and natural resources; that indeed the aim should be to allow in as much foreign capital without relinquishing control.⁹

The calibrated response to direct foreign investment continues to be consistent with the view of the nationalist economic programme as consisting primarily of a reassignment of pre-existing property niches in an economy that is a going concern. In the case of retail and labour, demands even for full nationalisation remained plausible, since there was little doubt (at least in the delegates' minds) that nationals were in a proximate position to take over the niches currently occupied by foreigners. The only difference in the case of natural

⁸ ROXAS: "Creo que nuestro propósito es no permitir que los extranjeros controlen estas actividades, que son importantes para nuestro desarrollo económico y político. Por otro lado, no debemos cerrar las puertas a la ayuda de fuera en forma de capital que necesitaremos para la explotación de nuestros recursos, por tanto, al fijar un tanto por ciento como mínimo de capital filipino, debemos fijar el tanto por ciento que en nuestro concepto asegure el control de estas corporaciones por filipinos" [HR 1966b:134].

⁹ SINGSON ENCARNACIÓN: "A mí me importa poco que una casa... haya costado, por ejemplo, cien mil pesos; a mí me importaría poco que el extranjero hubiese puesto cuarenta y nueve mil pesos y yo cincuenta mil pesos, si él, de todos modos, no estaría más que en la cocina y yo en la sala y demás habitaciones y dependencias" [HR 1966b:147].

resources and utilities was a recognition of Filipinos' inability to muster sufficient capital for such sectors (particularly mining), hence the clear concession to some degree of foreign ownership. In support of this hypothesis, one observes the fact that debates were more heated over the nationality requirements for leased *agricultural* lands. This was presumably because agriculture was a more familiar field where enough Filipinos had long been active and felt themselves in little or no need of supplementary external finance.¹⁰

It is also evident that direct foreign investment was commonly viewed at the time primarily as a form of *capital augmentation* rather than as a source of proprietary technology and access to larger market networks. This was hardly unusual, since the current understanding of the nature of the firm (Coase and Williamson) and of contractual peculiarities of foreign investment (Dunning) as being based on asset-specificity would not emerge until the 1970s. In the context of the nationalist agenda of control, it becomes evident that if foreign investment is regarded as being purely a form of financial capital, then it is inferior to foreign loans (as Recto himself would continue to expound later in his career). For in this view foreign loans contribute capital without entailing the prospect of foreign control (that is, except in times of financial distress).

The regalian doctrine

Studies and debates surrounding charter change in the 1990s (e.g., the Constitutional Commission of 1999), especially those relating to the "updating" of economic provisions, have focused attention on the differing framework that guided the 1935 constitution. In particular, the adoption of the "regalian doctrine" gave the state permanent ownership over natural resources and prevented their alienation (Art. XII, sec. 1), restricting private access to "disposition, exploitation, development, or utilization".

The report of the committee on natural resources had initially allowed for alienation of natural resources, as well as limiting the period of leases and licenses.¹¹ But S. Araneta criticised this inconsistency and "lack of philosophy" and proposed the prohibition of alienation altogether, an argument that won the day.

In explaining the adoption of the regalian doctrine, it seems inadequate simply to point to the differences in the U.S. legal system and the continental system inherited from Spain. While it is true that the one was based on common law and allowed freehold and alienation, while the other was based on the civil code and traditionally favoured the regalian doctrine, the alienation of public lands in countries formerly under Spanish rule was hardly unknown. Indeed, the alienation of the *realengas* by award or purchase after the wars of independence was a common way to reward heroes of the revolutions in Latin America, with massive alienation of the public domain already completed in Chile, Mexico, Argentina by the early 20th century. Indeed, for many of those countries it was the prevailing opinion that "the government should not retain the public domain for itself" [Isay 1935: 623].

¹⁰ LOPEZ: "... Gentlemen of the Convention, I do not think we need foreign capital today to develop our agricultural resources" [HR 1996b:142]. RAPOLS: "Yo estoy, por ejemplo, conforme con que pidamos la ayuda del extranjero para tender ferrocarriles, para explotar ciertas industrias que necesitamos; pero creo que no necesitamos de la ayuda de fuera para explotar nuestros recursos agricolas" [HR 1996b:144] (Emphasis supplied.).

¹¹ The report of the natural resources committee provided: (1) limited the exploitation of resources to corporations that were 75 percent Filipino and set a 50-year limit to licences, concessions, and leases; (2) imposed size-limits on land ownership and tenure (500 has.) for corporation; (3) set limits to individual purchases (50 has.), individual leases (500 has.), homesteads (20 has.); and grazing lands (2000 has.); (3) allowed land size limits to be set by law; (4) allowed expropriated landed estates to be conveyed at cost; (5) and provided that one-fourth of landholdings must be worked for three consecutive years lest it face expropriation [Aruego 1938: 595].

One may argue, therefore, that the Philippines deviated from that experience, and Aruego explains that this was done for a specific purpose:

The adoption of the principle of state ownership of natural resources and of the Regalian doctrine was considered to be *a necessary starting point for the plan of naturalising and conserving the natural resources of the country*. For on the establishment of the principle of state ownership of the natural resources, *it would not be hard to receive recognition of the power of the state to control their disposition, exploitation, development, or utilization* [Aruego 1938:601]. (Emphasis supplied.)

More properly, therefore, the adoption of the regalian doctrine was part of a larger conception of the role of the state in directing the economy, a subject to which we shall return below. The debate was joined especially over the issue of mines, which represented an emerging industry at the time¹². Mining was the original reason for the enunciation of regalian doctrine in Europe, and the latter and was the second of two alternatives: either (a) minerals formed an integral part of real property and therefore only the landowner may prospect for minerals or exploit any mines discovered, or (b) the right to all minerals is reserved to the state and declared a royal prerogative.

Historically, two things had precipitated the rise of the doctrine of royal prerogative:

First, mining penetrated to ever increasing depths, becoming more and more of a specialised art of which the landowner was ignorant; secondly, the existing mines no longer satisfied the need for metals. There was therefore a demand for the opening of new mines, whereas agricultural land was still abundant. From this situation the theory developed that mining was more valuable than the ordinary cultivation of the soil [Isay 1935:515].

Conditions in the Philippines at the time were strikingly similar, which is why the resort to the same principle should prove no surprise. On the one hand, the business of mining clearly involved both technology and amounts of capital to which even wealthier Filipino individuals and corporations did not have access. On the other hand, the pressure to develop mining rapidly was acute in the light of high world prices, especially of gold.¹³ Simply positing private ownership and freeholding (where landowners also own the rights to mine), even if laden with nationality requirements, would probably have been viewed as unsatisfactory, and there were economic arguments that allowing for private ownership and freehold would only lead to land speculation and underdevelopment. For then, either the mineral resources might remain undeveloped for want of own capital and technology (or owing to speculation) on the part of Filipino owners; or alternatively foreign capital and technology would have entered through individual leasing. Even the latter scenario, however, would not be without its own problems, leading to either: (a) free-rider problems that would raise transactions costs to the lessor and delay exploitation; or (b) bargaining with asymmetric information favouring the lessor, with rents being captured exclusively by foreigners. The latter would have been objectionable and viewed as a failure to protect patrimony. The state as mine-owner, it was believed, would be in a better position to cut through these difficulties, a major reason being that it would do a better job at bargaining with foreigners than would Filipino individuals or even corporations. It could, among other things, develop the mine itself, or cut down on transactions costs by leasing out larger areas or using its police powers to expropriate uncooperative owners of surface land.

¹² The support for the non-alienation of mineral resources appeared overwhelming. Singson Encarnación proposed a more liberal regime that exempted mines "not necessary for national defence", but this was voted down.

¹³ Kolb [1942:331] reports on the "gold fever" that seemed to have gripped Manila in 1937 owing to the high price of gold since 1933, and the country's incipient rise as one of the world's important gold producers during the time.

3. A strong state

The changing conception of the role and nature of the state is one of the lesser noticed aspects of the discussions surrounding the convention. One of the clearest expressions of this was the "extraordinary privileges" accorded to the president. The provisions for the executive included the power on line-item vetoes (Art. VI, sec. 11 (2-3)) for both appropriations and revenues tariffs and taxes; control over local governments (Art. VII, sec. 11(1)); the power to suspend the writ of habeas corpus and declare martial law (Art. VII, sec., 11(2)); and the power to make appointments of justices and judges (Art. VII, sec. 7). Indirectly, the president was also powerful to the extent that the constitution vested power in the state to "establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to the operated by the Government" (Art. XII, sec. 6).¹⁴

Much of what has been written to explain the phenomenon of a strong executive¹⁵ in Philippine constitutions have tended to focus on inherent age-old tradition in Philippine culture and society exalting the "head-man" [Agpalo's *pangulo*] or "certain cultural values unique in the Philippine tradition, such as the principle of state supremacy and the exaltation of authority" [Agoncillo 1990:352], the peculiar ambitions of Manuel Quezon [Golay 1997]; or perhaps the carry-over of powers vested in the executive of the colonial government.

However, an obvious source of inspiration for the constitutional provision on the strong executive and state authority has been surprisingly neglected, namely, changing world conditions and competing ideologies that posed serious questions to the liberal-capitalist democratic model represented historically by the U.S. and the Great Britain. By the time the constitutional convention held its sessions in 1934-1935, several momentous events had already occurred that posed serious challenges to *laissez-faire* capitalism and to liberal democracy. First, the 1918 Revolution in Russia had already led to formation of the Soviet Union and the world's first socialist country. Second, the takeover by Mussolini and the fascists in Italy since 1922 represented an important critique, or at least a major qualification, to the Anglo-American combination of liberal democracy and capitalism. In Germany, Hitler had assumed emergency powers over a weakened parliament in March 1933, freeing himself from all constitutional restraints and "aligning"¹⁶ the bureaucracy and the judiciary. Dictatorships or authoritarian governments had also emerged in major Latin American countries such as Argentina (1930) and Brazil (1930). Third, the Great Depression had been lingering since 1929, a sign of the obvious weaknesses of liberal capitalism. While global slump did not affect the Philippine economy in a major way, it was at least evident that even the US president F. Roosevelt presented the example of a new orientation by modifying the purely liberal orientation of American capitalism. Roosevelt would promise a "new deal" upon his election in 1932 which, though not intellectually a Keynesian programme, certainly went some way to acknowledge the failure of purely *laissez-faire* economic policies.¹⁷ For more than one reason, therefore, theories and social movements

¹⁴ It is notable that the qualification contained in the original report of the committee on industry that the establishment or takeover of industries be done "by legislation" or "by law" was dropped in the final version, allowing the executive branch greater leeway.

¹⁵ On the current significance of this institution in political and economic development, see, e.g., de Dios and Esfahani [2001].

¹⁶ The notorious *Gleichschaltung* in German.

¹⁷ Briones, who would be among the eloquent defenders of the strong presidency (see below) explicitly cited the New Deal approvingly to support the modification of *laissez-faire* liberalism (HR 1966a: 473): "The huge drama now unfolding under the administration of President Roosevelt revolves around none other than the following formidable conflict: the conflict between untrammelled individualist economic liberalism and the sovereign [*sojuzgadora*] actions of the State." The possibility that this

that exalted state economic intervention and central political authority were intellectually respectable in the 1930s.

Indeed, this much can be gleaned from the valedictory (originally in Spanish) of the convention president, C. M. Recto. In seeking to explain why the convention had written in a presidency with extraordinary powers and privileges, he reasoned:

...[W]e cannot be insensible to the events that are transpiring around us, events which, when all is said and done, are nothing but history repeating itself. In fact we have seen how dictatorships, whether black or red, capitalistic or proletarian, fascistic or communistic, ancient or modern, have served as the last refuge of people when their parliaments fail and they are already powerless to save themselves from misgovernment and chaos. Learning our lesson from the truth of history, and determined to spare our people the evils of dictatorship and anarchy, we have thought it prudent to establish an executive power which, subject to the fiscalisation of the Assembly, and of public opinion, will not only know how to govern, but will actually govern, with a firm and steady hand, unembarrassed by vexatious interferences by other departments, or by unholy alliances with this and that social group. (Taken from Aruego[1935:1066], which reproduces the speech in full.)

Much has been written about the lack of connection between the broader social movements and the earlier Philippine propaganda and revolution. For example, Majul [1996[1960]:79] observed how the reformists of an earlier generation appeared to have still been enamoured by the *ilustración* and oblivious to the fact that the rest of Europe had moved on to positivism and even socialism. At around the time of the 1935 constitution, however, there was no longer a shortage of a willingness to experiment.

The political and economic opinion prevalent at the time saw the need to qualify economic liberalism in a major way. *Laissez-faire* policies were perceived as outmoded, while state intervention was regarded as the emerging modern trend. This much is seen even in the remarks of some delegates who criticised the first draft. Jose Reyes (HR 1966a:118), for example, first pointed out that parts of the constitution appeared not to jibe with each other, with the bill of rights harking back to the "individualistic liberalism such as was in vogue in the 18th or 19th centuries", while other provisions providing for executive discretion and privilege "seemed to adopt *the most modern of current tendencies in several countries of the world*" [underscoring supplied]. Reyes described the draft's provisions for a strong executive and state interventionism as possibly a passing fad.

In seeking a more general rationale for retail-trade nationalisation, the Committee on Commerce (in its report reproduced in Aruego [1938:912]) chaired by S. Araneta pointed to the example of "contemporary national practices of controlled economies":

This objection [against retail-trade nationalisation] would hold good *if we were still living in an age of free and untrammelled competition*. All over the world now, the nations have been openly controlling, by legislation, the whole economic system within and even outside their own territories, controlling production, distribution, prices, etc., leaving hardly any leeway at all to the free play of supply and demand so sacred to the regime of *Laissez Faire*. Besides, free competition presupposes equal terms between the competing units which, as we have already indicated above, do not exist for Filipino retailers. (Emphasis supplied.)

Nor was it only the determined nationalists like Araneta who subscribed to the demise of *laissez-faire*; this was true as well of members of the subcommittee of seven, who may be taken to represent the intellectual mainstream of the convention.¹⁸

C. Benitez (who also served as dean of the University of the Philippines college of business), for one, "defended the provisions concerning the conservation of natural resources and the nationalisation of industries as against the *old theory of rigid individualism*, which had been the source of economic aristocracy and tyranny. *Objective direction* which, according to Goethe, is the principal element in all progressive epochs¹⁹, was the outstanding virtue of the particular provisions" (as paraphrased by Cuaderno [1937:33], emphasis supplied).

Finally, Cuaderno [1938:106] himself, another member of the committee of seven (subsequently postwar secretary of finance and first central bank governor), would write explicitly that:

The convention should not be insensitive to the social and political changes which have taken place in the world, and *which call for the control by the State of the affairs of men in the interests of general welfare.* [emphasis supplied]

While they might have disagreed over the longer-term significance, proponents and doubters alike appeared to agree that *laissez-faire* and individualism were the trend in the 18th and 19th centuries", while state intervention and central power were more "modern" phenomena. Deconstructing their speeches, the proponents evidently believed that it was a persuasive argument to cite the "contemporary" practices of controlled economies. Conversely, they presumed their listeners shared the idea that regime of *laissez-faire* capitalism accompanied by a minimalist state was an outmoded phenomenon.

Shortly before the convention adjourned, Quezon (who was then president of the Senate) addressed it on 5 December:

The world today is facing great social revolutions. Every day we learn of radical changes in government. *More and more the daily affairs of men are being controlled partly, or almost totally, by the State. And it is because the productive resources of man have so increased during the last century and the present one that the social and political institutions which he has evolved to control and direct the distribution of this wealth so produced, have proved to be partly insufficient.*

You all have in mind *the situation existing all over the world today*; and in framing the Constitution, while you have set definite barriers against any possible encroachment on the rights of individuals which every free-loving people consider [sic] as more precious than life itself, you have however given to the government you are creating sufficient powers that will enable it -- whenever necessary -- to efficiently and properly direct our social activities so that public welfare may be promoted and defended at all times.

It is with this end in view, I take it, that you have given the National Assembly under the Commonwealth and under the law, powers to provide for the control and operation of public

¹⁸ The members of the subcommittee of seven of the sponsorship committee were: Filemon Sotto (Cebu); Manuel Roxas (Capiz); Vicente Singson Encarnacion (Ilocos Sur); Manuel Briones (Cebu); Conrado Benitez (Laguna); Miguel Cuaderno (Bataan); and Norberto Romualdez (Leyte).

¹⁹ The allusion is to Johann Peter Eckermann's "Conversations with Goethe", where in discussion of the arts Goethe is quoted as saying, "Alle im Rückschreiten und in der Auflösung begriffenen Epochen sind subjektiv, dagegen aber haben all vorschreitenden Epochen eine objective Richtung. ... Jedes tüchtige Bestreben ... wendet sich aus dem Inneren hinaus auf die Welt, wie Sie an allen großen Epochen sehen, die wirklich in Streben und Vorschreiten begriffen und alle objektiver Natur waren." Benitez [HR 1966a:285] himself interpreted "objective direction" to mean an "increasing attention to the material resources of the country on the part of the inhabitants thereof".

utilities, powers to determine the size of agricultural land -- as you have already done in the Constitution -- that may be owned by corporations, and of agricultural land owned privately; and to expropriate large landed estates when necessary in the public interest. [HR 1966b: 377].

It was in a response to J. Reyes, who questioned the curious juxtaposition in the constitution of 18th-19th century liberal ideas and the more contemporary state-centred tendencies, that Briones, also a member of the Committee of Seven, provided the clearest rationale for the strong executive:

Why do we have to provide for a strong state [*estado fuerte*] as we have done in the present constitutional project? Very simply, it should be noted that the vast powers lodged in the executive refers principally to the jurisdiction of the state over economics. It is because we live in an age in which almost all the greatest public problems have an economic background, an economic leitmotif. Never as in modern life has it been possible to say with perfect justice that economics is the spinal column of history. *The crisis of the state originates from this: that political liberty has become incompatible with individualistic economic liberalism. It seems a paradox but it is the truth. It has been noticed that where economics has held unlimited sway, untrammelled by the regulating intervention of the state, the individual has been crushed under the formidable complexity of economic financial organizations; and on the other hand, where the state has been able to subjugate and discipline economic forces, subordinating them to the the social welfare, liberty and democracy have found a more secure place.* (quoted and translated from the original Spanish by Cuaderno [1937:34])

In many ways, this is a thoroughly modern explication of the debate regarding a developmental state. Recto's discourse regarding the need to insulate the executive from lobbying by various social groups is well in line with current notions regarding the costs of "rent-seeking" and lobbying under democracy [Mueller 1996:268-269], or the political science literature on the need for state autonomy in a development context (e.g., Hutchcroft [1998]).

While not outrightly discarding individual liberty, this was certainly a significant modification, expressing serious misgivings about the compatibility of individual freedom and economic liberalism. In essence Briones states that economic liberalism is or has become incompatible with political liberty. In the order of priorities, however, political values are paramount, and therefore, one is forced to sacrifice economic liberalism through a greater role for the state, *in order to preserve political liberty*. In a later period, a generation of Asian leaders would reverse this order, sacrificing political liberty ostensibly in order to preserve economic liberalism. The strong executive was thus seen as a *compromise* between a model of individualist liberal democracy and the obvious qualifications of the concept owing to the rise of the examples of fascism and socialism.

The deepest source of apprehension with this experiment, of course, was the possibility of a dictatorship. To this, the convention proposed an answer that was verbalised by Quezon himself:

There is one great danger in having a strong executive department, and that is the danger of dictatorship. Once again this Convention has shown its vision and wisdom when it provided that there shall be no re-election for the position of the Chief Executive. This clause in the Constitution guarantees to the Filipino people the impossibility or at least the improbability of having a Chief Executive who will try to perpetuate himself in power. We are familiar with the history of some of the Central and South American Republics and our conclusion is that to a large extent the revolutions that have taken place there were caused by the fact that their Chief Executives are permitted to present themselves as candidates for re-election. [HR 1966b: 378]

For one who would not be altogether disinterested, Quezon was surprisingly candid. But while the "guarantee" indeed existed, it was hardly ironclad. Not long after, and largely to

accommodate Quezon who was seeking a second term [Golay 1997: 389], the re-election clause was inserted in 1939 by the Commonwealth's national assembly acting as a constituent assembly, as well as restored a bicameral legislature. Surprisingly enough, standard histories (including Agoncillo [1990]) fail to discuss this first-ever episode of engineered and self-serving charter change. More ironically, perhaps, even a two-term presidency did not prove sufficient for Marcos in 1972, and he would engineer his own version of charter change to extend his stay in power.

Conclusion

Remarkably, at about the time of the 1935 constitution, Filipinos were half-flirting with policies and institutions that seemed influenced by the socialist, social-democratic, populist, and even possibly fascist ideas and movements which were ascendant at the time, and exploring how these could be made to serve the more familiar historic objectives of nationalism.

Golay [1997:354], for one, seemed to sense this when he sought to explain the larger imperative for the centralisation of power in Philippine politics beyond the Quezon's lust for power:

The American colonial period in Philippine history is essentially an account of the campaign of Filipinos for political power. The strategy adopted to wrest power from American administrators was the creation of a monolithic political party capable of speaking for an overwhelming majority of Filipino people and headed by a national leader firmly in control of the party. This development contributed to *the concept of a national leader behind whom society was mobilized to supplant the colonial power.* [Emphasis supplied.]

As seen above, the strong state role was indeed consciously designed to be a mere instrument for the main agendum, which was nationalism, but only where private capabilities and capital were inadequate to ensure national control of strategic economic niches. In principle, moreover, the strong executive was seen as an innovative pre-emptive measure that would prevent parliamentary gridlock and hence also the popular frustration that leads to the collapse of parliamentary democracies.

A number of these ideas influenced the design of institutions and policies contained in the constitution; it would be left for a later generation reared in the rhetoric and practice of liberalisation to realise how distant the vision of 1935 was from their own perception of imperatives and how they would have to come to grips with this legacy. Later times and trends would render the concerns and preoccupations of 1935 more distant: the defeat of the Axis powers, the devastation of the country as a result of World War 2, and the Cold War certainly rubbed off much of the sheen from the performance of populist authoritarian regimes -- at least until the idea would be revived by Marcos. The resurgence of global capitalism, especially since the collapse of the socialist bloc, has removed most of the remaining models of noncapitalist development and turned a major part of the competition among countries into locational competition for the technology and networks contained in direct foreign investments -- putting paid to the old preference for foreign loans over investments. Decades of governance problems, corruption being chief among them, have taught people of developing countries better than to rely on the abstractly benevolent state and instead pay more attention to the private motives of politicians and bureaucrats. Finally, rapidly changing markets and technologies have disabused people of the notion that economic programmes need be little more than statutory redistributions of rights and economic niches that can be implemented without affecting total output and productivity.

From a broader perspective, the experience with the 1935 constitution carried a negative lesson in constitutional design that subsequent revisions seem to have ignored, namely, the danger of burdening a constitutional project with provisions that overly focus on directly solving problems of the moment -- as framed by prevailing ideological fashions -- rather

than simply providing a framework and a set of credible institutions to make social decisions under changing circumstances. If anything, subsequent revisions of the constitution (both in 1971-1973 and 1986-1987) multiplied and reified pending social claims, notwithstanding the frequent conflicts among many of them. Part of the reason this occurs is the desire of many to short-circuit the social decision-making process by enshrining their demands in the constitution, rather than working for their incorporation into ordinary statutes.²⁰ The result in any event is that the present constitution which at least one legal scholar has called "one of the more detailed and verbose among the constitutions of the world." [Serenio 1999:27].

In the end, a skeptical comment by the delegate Ramos is prescient even for our times. Many of the novel provisions of the 1935 constitution, he said, were

a reflection of the fascination exerted by current tendencies in many lands. Whether or not the tendencies will remain or disappear when emergency conditions are overcome cannot be foretold. It is certainly premature to place them as permanent fixtures in the fundamental law of the country (HR 1966a:118).

That is a point to note, given the current urging to now reconfigure the constitution in response to our own "globalising" times. If anything, the lesson is that in constitutional design, less is perhaps better.□

²⁰ That is, "backward induction" in game theory terms.

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