

“Crisis of Sovereignty” Series (Part 19)

By Ado Paglinawan

It could have been one of those otherwise ordinary Saturdays, but it was not to be. The first occasion was a sumptuous native Filipino breakfast served by Miriam Magallona in her home inside the UP Diliman compound.

Appetizers were boiled plaintain bananas (*saba*) and gabi roots. Then a splash of deep fried eggplant (*talong*) dipped in a little scrambled egg. Red rice wowing one's carbs, Bacolod *langgoniza* (Filipino sausage), and the traditional corned beef, awakened to a 3-in-1 brand of local coffee sweetened and milked to your taste. What a setup to prelude a dynamite of a discussion!

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This was where Miriam's better half, UP law dean and known constitutionalist Merlin Magallona, unleashed his legal theory on the unconstitutionality of the May 2010 election I reprinted earlier and that he summarized thus: "Comelec outsourced Philippine sovereignty to a foreign corporation, in violation of the Philippine Constitution. It merely served as Secretariat to Smartmatic. But the mandate and function were exclusive and simply non-delegable."

The second occasion would be in San Juan, in the old residence of the late accountancy icon Carlos Valdez, where his son Butch served chicken adobo, fried *danggit* fish, salad mix of red eggs, onions and tomatoes, the unavoidable corned beef, *langgoniza* this time from Vigan,

scrambled eggs, choice of steamed or garlic fried rice, brewed coffee or crab-egg soup, and an option for hotcakes for the continentally-inclined.

But again this would be beyond a culinary caucus, and indeed a power breakfast!

Such culinary experience flashes back the photo mural that caught my eye one time Jun Estrella and I dined at the KKK restaurant at SM Cubao.

Imitating the Historical Dinner of Rizal and Company

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In their youth as *Los Indios Bravos*, Jose Rizal was engaged in a post-dinner roundtable with Pardo de Tavera, Felix Hidalgo, and Juan Luna, in either Par
is
or
Madrid
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Wine glasses abound, and I suspect red wine was earlier accompanied by crackers, pear or apple and grape, and a choice cheese.

There is no knowing who else were in the other half of the table. Marcelo H. del Pilar could have been there, and so why not Graciano Lopez Jaena and Mariano Ponce too? Could the Propaganda Movement and *La Solidaridad* have been discussed there? Such a party certainly would not be engaged simply in some discussion about women or religion. Most in attendance were the core of the Philippine Revolution of 1898.

Circa July 2010, this one in the Valdez residence was no less a challenge to the Filipino gourmet as to a political philosopher. It was the day Allan Paguia joined us, contributing the passion of his youth to the erudite wisdom of Merlin Magallona.

“The critical mind has disappeared,” Allan Paguia said, “The law profession used to be more of service and less of profit. Now it is more of profit rather than service. Law has become business!”

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Horribly, this has ushered in an era of what the great Arturo Tolentino called the 'constitutional tyranny of mediocrity'."

Dean Magallona did not let that pass without a rejoinder, citing Adolf Azcuna distorting the nature of treaties when the Supreme Court associate justice invented an entirely new category in the process of treaty-making. Our 1987 Constitution requires the ratification of the Senate for any agreement to become a treaty.

Atty. Azcuna took exception when it comes to the Visiting Forces Agreement arguing that it was not a policy-making treaty but a merely "an implementing agreement" of the mutual-defense treaty between the United States and the Philippines.

The incongruity the dean said that explanation was a forced a 46- year-old solution to a problem about a Constitution that was not yet then in existence! Duh?

The dean continued "If pursuing economic policies under a matrix on the advice of external forces, then who is controlling our national interest?"

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{/xtypo_quote}

And if the people do not do anything about this situation, do we not default our patrimony to internal interests or outside forces? This is precisely how we have lost tens of thousands of square nautical miles to our neighboring countries. This is how we have in JPEPA an economic zone reserved for the exclusive benefit of foreign investors.

This is also why some 365 trees in the rainforest of Subic Bay have been felled to give way Hanjin interests.

“Quite an oxymoronic fate where the Philippine state has been subordinated to global powers,” adds Allan Pagua, “such cannot be sovereignty because it is not independent from foreign powers.”

He complained that there seems to be no more formal semblance of authority in our country

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anymore. Even justices are writing decisions that no longer support the nature and intent of the Constitution but to suit pre-established political objectives.

The recent election is a classic case in point, Dean Magallona adds, the basis of authority was no longer the Constitution but the contract with a foreign corporation.

Allan Pagua saw this as a sovereign cop-out. He said selling away sovereignty is treason even without a Constitution.

He said when he read the case for the nullification of the May 10, 2010, election filed by Homobono Adaza, Mentong Laurel and me, he said even the canvassing was in violation of the law that requires it to be done in the presence of both houses of Congress in joint session. That, among others, he added, made it void, and void as defined in 1901 means “having no legal existence”.

That election to Mr. Pagua’s mind was in willful violation of the Constitution, existing statutes and even the rules of electronic evidence, citing the need for digital signatures.

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This brings us into an inevitable conundrum, Dean Magallona said, that may call for a constitutional coup where the armed forces could act to defend what is the common good and this has to necessarily flow a process of winning the hearts and minds of the people.

This builds into a scenario where “we are not rebels here but the constitutionalists, Allan Paguia clarifies, we do not move for the overthrow of a legitimate rule but the removal of an illegitimate authority and its replacement by a duly-constituted one. The first is unconstitutional, the second is our constitutional duty.”

He identifies the source of his terminologies: “Article II Section 1 of the Constitution first provides that we have a republican form of government, and second says that all sovereignty resides in the people.”

He calls this sovereignty of the people as “original sovereignty” distinguishing it from government’s “derivative” sovereignty. That police and the military salutes government officials, he says, has become much more than a sign of respect but a surrender of sovereignty to them, forgetting that the true-and-original sovereign in a republican state is the people.

As obviously 90-million Filipinos cannot run the government, it (the government) merely acquires its derivative sovereignty through election by the people. As such they become their

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representatives and when they appoint other officials, these officials become further extensions of such derivative sovereignty.

It goes without saying, therefore, that the process with which officials are elected or appointed must follow a legitimate process, prescribed by law.

Responding to this, Dean Magallona shared an experience he had addressing 800 barangay officials in Palawan upon the invitation of the late Governor Salvador Socrates. After he had delivered his remarks, one elderly man went to the microphone to ask: “Kung kami po pala ang tunay na may hawak ng soberinidad o poder sa ating bayan, e bakit po hindi naming alam?” (If we are the real holders of sovereignty in our own country, why is it that we do not know this?)”

Dean Magallona bewailed the failure of our educational system and media to inform our citizens of their sovereignty and that they are stakeholders in everything that happens to our country. Moreover he said that when they vote, they think they are merely privileged participants in the process and not essential actors exercising both their God-given and therefore inherent right as sovereign power.

The subliminal that is still in effect is that those who only have property or for that matter the rich are still the determinants of national policy.

Mr. Paguia clarified that even the framers of the Declaration of Independence of the United States were divided on the third essential aspiration of its original thirteen states following life and liberty. The initial proposition to adopt “property” as an offshoot of John Locke’s thinking, was being championed by no less than Thomas Jefferson.

It was Benjamin Franklin and Alex Hamilton, however, who argued that property cannot be a goal but only a means to a more superior aspiration and that is “pursuit of happiness”, a concept that originated from Wilhelm Leibnitz, that was closer to the American ideal.

The pursuit of happiness over the aspiration for property has been succeeding in the United States because the American people act on their sovereignty. As the decades progress, even its prevalently white population has surrendered to the fact that the US of A is a migrant country, a motley of all diverse nationalities but sovereign power and equal in right as citizens of one nation.

{xtypo_quote} The colonial past is still very much a reality today but the masters of the nation are now of our own same skin. – From the book ‘A Nation Unborn’ {/xtypo_quote}

Linda Olaguer Montayre in her book "A Nation Unborn" bewails that Filipinos have missed this point up to now. The colonial past is still very much a reality today, she writes, but the masters of the nation are now of our own same skin.

Ten-percent of the population, who owns much property, are lording it over the country's resources at the obvious neglect of the ninety-percent. These are the oligarchs and the ruling class. The latest of them is Gloria Macapagal-Arroyo, a daughter of former President Diosdado Macapagal who married into the Arroyo oligarchy.

Mrs. Arroyo grabbed power in 2001 unseating President Joseph Estrada through a coup d'etat, and then three years after she was caught on tape again stealing the regular election from President-elect Fernando Poe, Jr. by cheating in the electoral count.

Despite that, however, the upper and middle classes remained acquiescent, and all efforts to unseat Mrs. Arroyo came to naught.

This illustrates the subservient chicken in the Filipino, settling for dung thrown at his direction even when his sovereignty is sullied, an utter irresponsibility that explains for Linda Montayre's yet "unborn nation." # # #

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