

## The Origins of the Party-List Electoral System in the 1986 Constitutional Commission

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### ABSTRACT

The article studies the origins of the party-list electoral system in the 1987 Philippine Constitution through a review of the proceedings of the 1986 Constitutional Commission and interviews with the 1986 constitutional commissioners. It seeks to help clarify the current debate on the purpose and meaning of the party-list electoral system that elects 20% of members of the House of Representatives by reviewing the transcripts of the 1986 Constitutional Commission and by interviewing the principal authors of the party-list provisions in the 1987 Philippine Constitution. Through the presentation of the original positions of the constitutional commissioners, the study seeks to better recount, recover, and review the founding vision of the framers of the 1987 Constitution that is buried in the accretion of the enabling law for the party list, Supreme Court decisions, Commission on Elections (Comelec) resolutions, petitions of political party and sectoral groups, and commentaries that have competed to interpret the constitutional provisions on the party list in the past 28 years of existence of the 1987 Constitution.

*Keywords:* Party-list electoral system, 1986 Constitutional Commission, 1987 Philippine Constitution, proportional representation, House of Representatives

In April 2013, the Supreme Court came out with its *Atong Paglaum et al. v. Commission on Elections* decision which once more redefined the nature of the Philippine party-list electoral system for electing 20% of the members of the House of Representatives. *Atong Paglaum* reversed the more than a decade-old jurisprudence set by the controversial and equally landmark *Ang Bagong Bayani et al. v. Commission on Elections et al.* (2001) Supreme Court decision on who are allowed to participate in the party-list electoral system as found in paragraphs 1 and 2, Section 5, Article 6 of the 1987 Constitution and in its enabling law, Republic Act (RA) 7941, the Party-List System Act, passed in 1995 and first implemented in 1998.

Whereas *Ang Bagong Bayani* ruled that the party list is exclusively for parties and organizations that represent the marginalized and underrepresented sectors, *Atong Paglaum* ruled that the party list is now also open to national and regional parties and organizations that are not organized along sectoral lines and do not represent any marginalized and underrepresented sectors. Whereas *Ang Bagong Bayani* ruled that political parties that dominated the single-member district elections for the House of Representatives in 1995 are barred from the party list, *Atong Paglaum* ruled that any political party that runs candidates in the single-member district elections can now participate in the party list through its sectoral wing. And whereas *Ang Bagong Bayani* ruled that the nominees themselves must belong to the marginalized and underrepresented sectors they represent, *Atong Paglaum* ruled that for the nominees of sectoral parties, a track record in representing the marginalized and underrepresented sectors is enough.

In reversing the Supreme Court's previous decision, Justice Antonio Carpio, who wrote the majority decision in *Atong Paglaum*, claimed to return the party list to the "indisputable intent" (*Atong Paglaum, Inc. et al. v. Commission on Elections*, 2013) of the framers of the 1987 Constitution that was distorted by *Ang Bagong Bayani's* ruling on the party list. Hence, Carpio extensively quoted from the transcripts of the 1986 Constitutional Commission to support what he believed was his indisputable position that, as he wrote in bold letters, the "**clear intent, express wording, and party-list structure ordained in Section 5 (1) and (2), Article VI of the 1987 Constitution cannot be disputed: the party-list system is not for sectoral parties only, but also for non-sectoral parties**" (*Atong Paglaum, Inc. et al. v. Commission on Elections*, 2013). As his principal support, he quoted Commissioner Christian Monsod, the main proponent of party-list representation, 13 times in his decision. He also quoted Commissioners Wilfrido Villacorta and Jaime Tadeo, the two strongest advocates of sectoral representation, when they agreed to allow the participation of traditional political parties in the party list as long as these parties are organized along sectoral lines.

However, this supposed indisputable reading of the intent of the framers of the Constitution turned out as anything but that even among Supreme Court justices. No less than Chief Justice Maria Lourdes Sereno in her concurring and dissenting opinion to the *Atong Paglaum* majority decision questioned Carpio's reading of the true intent of the framers of the Constitution on the party list. Sereno also quoted the same three constitutional commissioners Monsod, Villacorta, and Tadeo whom Carpio cited but this time choosing quotes that tended to support her argument that the previous *Ang Bagong Bayani* reading that the party list is exclusively for the

marginalized and underrepresented sectors is the correct reading, as she saw the party list as “primarily a tool for social justice” (Sereno, 2013).

Nor is this strategy of cherry-picking the statements of constitutional commissioners to support their respective positions on the party list exclusive to the *Atong Paglaum* Supreme Court justices. The same strategy earlier happened in the 2001 *Ang Bagong Bayani* Supreme Court where the justices on the opposing sides employed the statements of the framers of the Constitution to buttress their positions on whether or not the party list is exclusive to the marginalized and underrepresented. Then Supreme Court Justice Artemio Panganiban who wrote the decision in *Ang Bagong Bayani* found it useful to quote Commissioners Monsod, Tadeo, and Blas Ople on the participation of political parties, only to radically qualify this participation as exclusive to parties representing the marginalized and underrepresented sectors by a controversial one-sentence quote from Commissioner Villacorta. Panganiban also quoted Commissioners Monsod, Villacorta, Ople, and Cirilo Rigos on barring the religious sector from participating in the party list. All these quotations Panganiban selected even as in one section of his *Ang Bagong Bayani* decision he expressly slammed the use of “extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose of the provision being construed” (*Ang Bagong Bayani-OFW Labor Party et al. v. Commission on Elections et al.*, 2001). The targets of his attack were the dissenting opinions to *Ang Bagong Bayani* of Justices Jose Vitug and Vicente Mendoza. The two justices directly or indirectly cited the exchange of Monsod with other commissioners to remind the Supreme Court majority in *Ang Bagong Bayani* that it was the party-list proposal of Monsod that won in the voting over the sectoral representation proposal and that the party-list representation did not reserve the party-list system to the marginalized and unrepresented sectors as Panganiban claimed but instead opened it to nonsectoral parties as well.

## PROBLEM AND METHODOLOGY

With these different, contradictory, competing, and selective versions of the Supreme Court of the real intent of the constitutional commissioners for the party-list provisions in the 1987 Constitution, it is interesting to note that no one studying the party list has bothered to attempt to recount and recover a more complete and consistent story of the party list from the vantage point of the constitutional commissioners themselves who were its principal authors. No work has studied the

competing proposals for what became the party-list system from their very origins to their development and to their final outcome.<sup>1</sup> This paper undertakes this important task by a more thorough review of the proceedings of the 1986 Constitutional Commission on the party-list debates. The review is supplemented by interviews of the commissioners to help clarify the 1986 transcripts.

Commissioners Villacorta, Tadeo, and Monsod were interviewed for this paper. Villacorta was interviewed because he was the main proponent of sectoral representation in the Constitutional Commission; Tadeo, because he was the first to advocate sectoral representation and was the most vocal in advocating sectoral representation during the plenary debates; and Monsod, because he was the main proponent of the party-list proposal. All three (see photo below) were the main protagonists in the sectoral representation versus party-list system debate and all three were the ones frequently cited by the Supreme Court justices when it suited them to stamp their own version of the true intent of the framers of the constitution on the party list.



Commissioners Christian Monsod (left), Jaime Tadeo (center), and Wilfrido Villacorta (right) during a session of the 1986 Constitutional Commission. Photographer unidentified. Photo courtesy of Jaime Tadeo.

The result of this recovery task is not just a better picture of what really transpired in the 1986 Constitutional Commission on the party list. By pursuing the origins of the party-list provisions from their founding vision among the framers of the Constitution, the paper also serves both as a case study on authorial intent, constitutional engineering, electoral reform choices, and as a critical review of the ideas of the constitutional commissioners themselves who debated the party-list provisions. By highlighting constitutional engineering, it provides a clear path to track down for later studies the extent to which later interventions like RA 7941, Supreme Court decisions, and Comelec resolutions have developed from, deviated from, or altogether distorted the original direction. By attempting a recovery of authorial intent, this study also serves as an assessment of the strengths and shortcomings of the initial positions espoused by the commissioners for their party-list and sectoral representation proposals. Since the party-list electoral system was an explicit reform choice by the framers to address the infirmities of the elite-dominated single-member district electoral system, the party-list story serves as an important repository for lessons on how and how not to introduce fundamental changes in the rules of electoral competition from which future generations of Filipino reformers can learn.

In terms of methodology, the paper employs the institutional approach in political science in analyzing the constitutional engineering process behind the party-list proportional representation electoral system introduced in the 1987 Constitution. In methodological terms, the institutional approach focuses on how the formal (i.e., written) rules of the political system significantly affect the strategies of political actors, hence emphasizing the central importance of the design of political institutions.<sup>2</sup> While in the past few years, a small number of important works have been done on Philippine political institutions, this approach is still very much a minority compared to the more dominant approaches like the class-based, neopatrimonial, and behaviorist approaches used in analyzing Philippine political institutions. The addition by the paper of a historical approach to the problem outlined by institutional analysis provides an integral temporal dimension in explaining the genealogy of political institutions. The paper argues that the recruitment of a historical approach addresses another serious weakness in studying political institutions in the Philippines which is the lack of a serious historical approach to their origin and hence the inability to trace, among others, the political economy of institution formation, the relation between authorial intent and non-plasticity of institutional outcomes, and the capability for temporal comparisons between the upstream qualities of institutional design (e.g., the original constitutional provisions) and the downstream qualities that interpret the original institutional design (e.g., laws, court decisions, executive orders, and practices).

## **ORIGINS OF SECTORAL AND PARTY-LIST REPRESENTATION IN THE 1986 CONSTITUTIONAL COMMISSION**

### **Sectoral Representation**

The original pure sectoral representation position argued that a certain number of representatives in the legislature be exclusively reserved for certain sectors of Philippine society. Its origins in the proceedings of the 1986 Constitutional Commission can be traced to as early as June 3, 1986, the second day of the commission's plenary debate, when Tadeo first mentioned the need for sectoral representation in the legislature. He opened the salvo for sectoral representation with the radical demand for "democratic representation in organs of political power" for farmers, workers, urban poor, ethnic minorities, church people, and students to counter what he saw as "elite democracy" of the ruling class in the country:

MR. TADEO: Ano ba ang pamahalaang ninanais ng pitumpu't limang bahagi ng ating mamamayang magbubukid?... Sa wikang banyaga ito ay "democratic representation in organs of political power or a form of government which will insure the broadest class in sectoral representation, including the system of proportional representation in legislature." Ang gusto naming pamahalaan ay binubuo ng mula sa kanayunan, ng magbubukid, manggagawa, urban poor, minorya, taong simbahan at mga estudyante. Lahat sila'y bahaging huhubog ng pamahalaan, mula sa pambayan at panlalawigan, hanggang sa pambansa. Naniniwala kami na ang people's power ay napapanahon na upang maging bahagi ng ating Saligang Batas, hindi isang people's power na nasa amin ang people pero wala naman sa amin ang power. Tanggapin natin na kung nasaan ang political power, naroon ang may kapangyarihang gumawa ng batas (The Constitutional Commission of 1986, I, p. 31).<sup>3</sup> [What government do the 75% of our citizen farmers want?... In a foreign language, it is the "democratic representation in organs of political power or a form of government which will insure the broadest class in sectoral representation, including the system of proportional representation in legislature." The government we want is composed of rural farmers, workers, urban poor, minorities, church people, and students. All of them are parts that will shape the government, from the municipal and provincial to the national. We believe that it is about time that the people's power be part of our Constitution, not a people's

power where we have the people but we do not have the power. We have to accept that where political power is, there lies who has the power to make laws.]

In the interview with Tadeo (personal communication, February 7, 2014), he explained in Filipino that he understood his proposal for sectoral representation in the legislature as a means to give political and economic power to the poor (“dukha”) who constitute the majority of the population. The poor are made up of the basic sectors of farmers, workers, urban poor, and ethnic groups who should be in the legislature but remain outside a government made up of a few elites – the rich and the landlords – who do not represent all sectors of the society. However, when asked about the “proportional representation” that he mentioned in the June 3 transcript, what Tadeo had in mind by the term was different from the understanding of political science or electoral system design literature which is to define proportional representation as a type of electoral system that distributes seats proportional to votes garnered.<sup>4</sup> Instead, Tadeo understood it as a numerical extension of his sectoral representation argument, understanding proportional representation in terms of distributing seats in proportion to the sectors’ size in the population: “Ang punto ko nung proportion siyempre sila [dukha] ‘yung marami, dapat marami rin ang kumakatawan sa kanila” [My point about proportion is that since they (the poor) are the majority then, of course, the majority should also represent them].

On June 4, Villacorta informed the body that he had filed a resolution calling for “significant multisectoral representation” in the legislature, making him the first commissioner to do so. Under the theme of “constitutionalizing people’s power,” and in response to the “clamor to enshrine people’s power in the Constitution,” he saw his sectoral representation proposal as “one of the most effective means” to achieve the goal of ensuring “legislative representation to the different major sectors of Philippine society:”

MR. VILLACORTA: But in any event, I just would like to react to the statements of Commissioners Garcia and Tadeo with respect to constitutionalizing people’s power in the different branches of government. In this connection, the body might consider the possibility of incorporating into the Article on the Legislative a provision on multisectoral representation to the national Legislature. I submitted this as a resolution in view of the fact that there is a clamor to enshrine people’s power in the Constitution, and it seems that one of the most effective means to achieve this ideal is to guarantee legislative

representation to the different major sectors of Philippine society. In view of the express need to democratize the law-making branch of government, I would like to propose that in addition to the regularly elected legislators based on district or regional representation, there should be significant multisectoral representation in the legislative body. These various sectors which include, among others, farmers, workers, cultural communities, women, teachers, professionals and students should elect their own representatives to the Legislative. (The Constitutional Commission of 1986, I, p. 36)

In the interview with Villacorta (personal communication, February 1, 2014), he shared that the source of his idea of sectoral representation came from his personal story of a University of the Philippines (UP) alumnus being politicized at a later age when he was already teaching in De La Salle University “by Lasallites who were members of the national democratic movement.” Politicization made him realize the widespread destitution and powerlessness of the marginalized sectors in Philippine society: “My eyes were opened to the reality of poverty, disempowerment, [and] the weakness of the marginalized sectors.” The inspiration for his sectoral representation was the people-power revolution that happened in February 1986 which, although not a left-of-center revolution but a middle-class revolution, nevertheless carried with it the aspiration “for a more egalitarian Philippines, where there is social justice, [and] respect for political and economic human rights.”

On the very first day that Villacorta informed the body of his proposed resolution, serious criticisms that would trouble the sectoral representation proposal throughout the proceedings were immediately raised by some commissioners. The most important criticism was the issue of lack of mechanics for so bold and novel a proposal, a criticism which would turn out to be the proposal’s Achilles heel for its critics in the commission. It would be the first question asked of Villacorta by Commissioner Francisco Rodrigo: “I agree with Commissioner Villacorta’s idea of having representation from different sectors such as: farmers, teachers, youth and others, but what are the mechanics of electing these representatives?” (The Constitutional Commission of 1986, I, p.37). Any proposal can be expected to be vetted on its mechanics but in the case of sectoral representation the concern becomes more valid because the proposal for an elected sectoral representation in the legislature under democratic conditions was a novelty not only in the Philippines but also in the world in 1986 and remains a novelty up to the present time. While gender quotas for women in elections are practiced by democratic regimes,<sup>5</sup> no democratic regime has practiced multisectoral representation in competitive



elections for its legislature. When there is sectoral representation in the legislature, this is done by authoritarian regimes as a facade of organic unity where supposedly major sectors of society are incorporated in the authoritarian regimes' institutions just as what Marcos did with his 1976 amendment to his 1973 Constitution that added appointed sectoral representatives to the 1978 Interim Batasang Pambansa and the 1984 Regular Batasang Pambansa.

In response to Rodrigo's question on the mechanics of electing sectoral representatives, Villacorta's answer was that "the specific mechanics can be deliberated later, but offhand I think the election of sectoral representatives could be done from within the respective sectors." Rodrigo, a former two-term senator under the 1935 Constitution and a seasoned politician, immediately pounced on the most important implications of such a position by asking Villacorta two questions and to which the latter answered in the affirmative:

MR. RODRIGO: Will the sectoral representatives be elected nationwide, let us say, all the women all over the Philippines will elect a representative for women, and similarly for the farmers?

MR. VILLACORTA: Yes.

MR. RODRIGO: So, there will be different lists of voters for farmers, for students and for youth.

MR. VILLACORTA: Yes. (The Constitutional Commission of 1986, I, p. 37)

The paper argues that Villacorta's stand on multiple voters' lists was the most serious institutional design misstep for the advocates of pure sectoral representation and would serve to undermine other important design components of sectoral representation. Legislatures with more than one electoral system to vote their members do not have more than one voters' list. What they have is one voters' list that allows voters more than one vote. For example, in Germany's Bundestag, from one voters' list, a voter casts one vote for the local representative and casts one vote for the party list.<sup>6</sup> Worse, what Villacorta initially advocated was not just two voters' lists but even multiple voters' lists. Not only is this position wrongheaded and unnecessary but it would also result in a mind-boggling administrative complexity for election officials and immense confusion for voters as officials try to find a way both to confine voters, who by nature belong to multiple sectors, in just a single voter's list and to ensure that the voters vote only for the nominees/ parties of the sectors in which they are enlisted. On the other hand, if voters were

allowed to enlist in multiple voters' lists, this will result in inequality of votes in a democracy. Critics of the pure sectoral representation such as Monsod would later on raise the issue of Villacorta's different voters' lists as a major reason why they are rejecting it as unworkable.

The conclusion of the exchange between Rodrigo and Villacorta revealed the vagueness of the understanding of pure sectoral representation of the uniqueness of its vision in relation to electoral systems of other countries from which it could learn. More importantly, it also revealed that the original vision of sectoral representation was not necessarily attached to a proportionality principle of a proportional representation electoral system. Faced with the novelty of the proposal, Rodrigo asked if Villacorta knew of "any country in the world that has already experimented on this." Villacorta answered that since the Philippines "just experienced a unique revolution," it must "look up to a brave new world and come up with innovations." He boldly declared the current situation as a "tabula rasa" in need of "some imaginative ideas in forming our new government." But when asked by Rodrigo if he had "any imaginative but feasible idea," Villacorta went on a generic comparative mode identifying the "proportional list system which is practiced in West Germany and in other European countries" as an electoral system from which the country can learn. Interestingly, he was also willing to consider a "majority electoral system wherein the candidates who get the majority vote become the representatives of the sector" (The Constitutional Commission of 1986, I, p. 37).

Commissioners Jose Suarez, Rigos, Hilario Davide, and Ople also asked about the mechanics of Villacorta's proposal. Because of space limitations, the paper only presents Davide who raised at least three more problems he saw with sectoral representation. First was on the multiple identities of every candidate/voter as Davide asked: "Let us take for instance, a lawyer who is also a farmer, how would we classify him? Does he belong to the professional or to the farmer sector?" Second was on candidates who abandoned their original sector to run as candidates for other sectors as he asked Villacorta: "Would that choice be final, or can he opt to join the professional sector, and if he cannot win in that political (sic) sector, in the next political exercise can he also opt to become a member of the agricultural sector?" Davide then stated that "if he will be allowed to change sectors, that might be dangerous. Anybody could just claim himself to belong to a particular sector. A doctor of medicine, for instance, would just buy a few fishing vessels and he could now join the fishermen sector." Third was on the exclusionary implication of identifying just a few sectors where Davide asked the question: "Would we, therefore, come to a point where a particular sector, which is not classified as major,

would be without representation?” Davide also counseled that “We must allow full representation from every sector to make our democracy real, genuine, and participatory” (The Constitutional Commission of 1986, I, pp. 38-39).

The vague and tentative answers given by Villacorta to the questions by the commissioners who interpellated him on June 4, 1986 tend to show that the proposal had not been carefully thought out yet at this stage and presenting it in such a raw state of conceptualization, lacking mechanics and detailed plans, could have only succeeded in emphasizing to the body the daunting task of making the ambitious proposal of popular empowerment practical. Granting that the sectoral representation proposal may have just been at its formative stage and worked more as a weather vane for the commissioners’ reaction to a radical and potentially controversial vision of popular empowerment, some of the answers given by Villacorta on that day would be used later by critics of pure sectoral representation such as Monsod precisely to criticize the impracticability of a separate, pure sectoral representation. During the interview with Villacorta (personal communication, February 1, 2014), when he was asked if he believed the argument of the constitutional design literature in political science that the devil is in the details when it comes to institutional design and if this argument applied to his proposal for sectoral representation, he admitted that “the details or the mechanics of implementing are important and I plead guilty to have been too idealistic.” He argued, however, that the reason driving the criticisms against his proposal was “not just the details, [but] it is more the whole philosophy behind it,” as some commissioners saw his proposal of giving the marginalized sectors full political opportunity as something “outlandish.”

It was also on the same day that Tadeo discussed for the first time the manner of electing his sectoral representatives which would give an indication of the voters’ list that this would entail. Unlike Villacorta’s proposal where members of the sectors who would be on different voters’ lists, for Tadeo it would be the individuals in different sectoral organizations who would vote for the sectoral representatives. As Tadeo declared that day: “Sa tanong kung sino ang pipili, sa panig ng mag [-]bubukid, napakarami ng farmers organizations – nandiyan ang Kilusang Magbubukid ng Pilipinas, ang Federation of Free Farmers, ang Agrarian Reform Beneficiaries Association, at ang Pambansang Katipunan ng Samahang Nayon.” [On the question on who will choose, on the part of the farmers, there are so many farmers organizations – there is the Kilusang Magbubukid ng Pilipinas, the Federation of Free Farmers, the Agrarian Reform Beneficiaries Association, and the Pambansang Katipunan ng Samahang Nayon.] (The Constitutional Commission of 1986, I, pp. 42-43). However, he did not explain how the organizations were going to be chosen.

### **Proposed Resolution 35**

On June 5, 1986, Proposed Resolution (PR) 35, titled “Resolution Providing for Significant Multi-Sectoral Representation in the National Legislature,” mentioned by Villacorta the previous day appeared on first reading in the transcripts. Like most resolutions filed with the Constitutional Commission, the actual contents of the resolution did not appear in the transcripts. It was a short two-page resolution and it reflected the same rawness and generality of the sectoral position exhibited by Villacorta the day earlier. The first page contained the title page with a two-paragraph explanatory note. The two paragraphs were about what Villacorta earlier said to the body on the “growing clamor to enshrine people’s power in the new constitution” and how sectoral representation in the legislature can address this clamor.

The second page contained the preamble and the body. The preamble basically just translated the explanatory note to four “whereas clauses.” The body of the resolution was all of one sentence giving stark evidence to the analysis of the paper and to the common complaints of the commissioners that the proposal lacked the mechanics to be considered more seriously. Shorn of its explanatory note and the preamble, the first proposed resolution on so complex and revolutionary an institutional design proposal as multisectoral representation in the legislature was just this single skeletal sentence: “Be it resolved, as it is hereby resolved, [t]hat there be significant multisectoral representation in the national legislature, with sectoral representatives elected from within their respective sectors” (Villacorta, 1986).

### **Party-List Representation: Proposed Resolution 334**

The original party-list position argued that 20% of representatives in the legislature are to be elected through a party-list system open to both sectoral and geographic (as long as beyond the district level) political parties, organizations, or movements. It first appeared in the proceedings of the 1986 Constitutional Commission on July 1, 1986, the twenty-first session day of the Constitutional Commission. This was when PR 334, titled “Resolution Proposing a System of Multiparty and Multisectoral Representation in the National Assembly,” filed by Commissioners Monsod, Vicente Foz, and Ricardo Romulo was mentioned on first reading in the transcripts. Like Villacorta’s PR 35, the actual contents of the Monsod et al. resolution did not appear in the transcripts.

Compared with the Villacorta resolution, this three-page Monsod et al. resolution was far more developed, extensive, and considered. The first page had the title page, and three whereas clauses and parts of Section 1 of the six-section body. The whereas clauses spoke of the demand “for some method of multi-party and multi-sectoral representation in the legislature to provide the broadest possible scope for participation in policymaking” and of the need for a legislative representation that “should not be based solely on locality or geography, but also on groupings of like-minded people sharing common interests and values” as well as the necessity “for citizens to have as much a voice and representation as possible in the legislature to develop a strong feeling of participation and cooperation among the people” (Monsod, Foz, & Romulo, 1986).

The second and third pages contained the body which had six sections. Section 1 divided a proposed 250-member unicameral National Assembly between 80% district representatives and 20% party-list representatives. Section 2 discussed the manner of electing district representatives. Section 3 allowed both sectoral and geographic participation in the party-list system. It also had for its last sentence: “Those seeking to win seats allocated to those elected under the party-list system shall, in addition, submit the names of its nominees, not exceeding twenty-five, to the National Assembly,” a rule which would only make sense in the context of Section 5 below. Section 4 worked on just one voters’ list that gave voters a total of two votes: “At the election of representatives to the National Assembly, each voter may cast a vote for a representative of his district or for a party, registered under the party-list system, or both.” Section 5 assigned the Comelec to come up with the electoral formula<sup>7</sup> for the allocation of seats in the party-list elections but sought to write into the constitution a 50% ceiling (hence the maximum of 25 nominees of a party for the 50-seat party-list seats) for the maximum seats that a single party can get and a 2.5% threshold for the minimum percentage of votes a party needs to be given a seat. Section 6 assigned the Comelec to promulgate the rules and regulations needed to implement the elections for members of the National Assembly (Monsod et al., 1986).

In the interview with Monsod (personal communication, February 13, 2014), he explained that he advocated multisectoral representation because of his experience in organizing the National Movement for Free Elections (NAMFREL) and in being part of the Bishops-Businessmen’s Conference (BBC). The experience imparted to him a different perspective: “Nagkaroon ka ng pananaw na panibago na iba sa business community na marami talagang sectors sa bayan natin na naiwan sa ating development” [You acquired a new perspective different from the business

community that many sectors in our nation are really being left behind in our development]. These people are politically disempowered without a venue to articulate their grievances: “Wala silang boses... wala silang fora or venues to raise iyung mga grievances nila kung paano dapat sila pansinin ng bayan o ng legislature” [They have no voice... they have no fora or venues from which to raise their grievances on how they should be recognized by the nation or the legislature]. He shared that he was “very impressed with the poor” when he was organizing NAMFREL chapters in about 55 different provinces. While one might have the initial impression that the poor are uninterested in NAMFREL given that their problem is poverty and not political power, Monsod stressed the contrary: “Napakadaling kausapin ng mga mahihirap” [It was very easy to talk to the poor]. They readily joined NAMFREL’s struggle to guard the sanctity of the ballot in the elections once they were assured that by joining NAMFREL they can help restore democracy and end dictatorship in the country. This stood in stark contrast to his experience in organizing the rich who asked so many assurances or guarantees for themselves (including insurance and US visas for their families) before they were willing to risk their necks against the dictatorship: “Maraming hinihinging kondisyon; ang mahirap, wala. Maliwanag silang mag-isip kung ano ba ang importante” [Many conditions are being asked by the rich, the poor nothing. They think clearly on what is important]. Monsod’s multisectoral representation was thus his answer to his own question why the poor who have very clear values and ideas are not given their voice.

## **DEVELOPMENT OF THE SECTORAL AND PARTY-LIST REPRESENTATION IN THE 1986 CONSTITUTIONAL COMMISSION**

### **Proposed Resolution 428**

On July 7, 1986, PR 428, titled “Resolution Proposing the Mechanics for a System of Multisectoral Representation in the National Legislature,” was introduced by 17 commissioners. In addition to Villacorta and Tadeo, the other 15 commissioners were Felicitas Aquino, Adolfo Azcuna, Ponciano Bennagen, Lino Brocka, Davide, Edmundo Garcia, Alberto Jamir, Ma. Teresa Nieva, Ople, Minda Luz Quesada, Florangel Rosario-Braid, Rene Sarmiento, Jose Suarez, Lugum Uka, and Bernardo Villegas. Like the two other resolutions, its contents did not appear in the transcripts.

The new proposal for sectoral representation was a significant advance from the original PR 35 of Villacorta. For the very first time, the mechanics of the multisectoral representation were clearly and carefully written down and laid out

in as detailed a manner as Monsod et al.'s PR 334. The paper in fact argues that the Villacorta et al. resolution is best understood as the multisectoral version of the Monsod et al. resolution since except on the section that reserved the 20% of members of the legislature exclusively to sectoral representation, PR 428 repeated almost verbatim the sections of PR 334.

PR 428 was four pages long and had four whereas clauses in its preamble, two of which were very similar to the three whereas clauses of PR 334 by Monsod et al. However, the second and third whereas clauses set them apart from the Monsod et al. preamble. The second whereas clause used the term "marginalized" who were to be represented by their own ranks in the legislature. The third whereas clause started with the same opening as one of the whereas clauses of Monsod et al., specifically: "Whereas, it has become increasingly clear that representation should not be based solely on locality or geography." However, instead of "but also on groupings of like-minded people sharing common interests and values," the Villacorta et al. resolution, in order to give the clause its distinctive sectoral representation stamp, changed it to "but also on interest of sectors particularly those that are marginalized and do not have a chance to win in the traditional system of election which is dependent on the access of the candidate to financial and power resources" (Villacorta et al., 1986).

It also had six sections with similar organization and flow as PR 334. Section 1 identified a 250-member legislature divided between representatives elected by district and by what it also called the "party-list system." The new resolution quantified the "significant multisectoral representation" demand of PR 35 as 20% of the legislature which is the same percentage as that of PR 334 (Villacorta et al., 1986).

Section 2 talked about the manner of electing district representatives and, except for a single word change and two typographical discrepancies, was the exact Section 2 of PR 334. Section 3 is where PR 428 became a sectoral-based party-list system. While it too had the rule of a maximum of 25 nominees for each party, PR 428 stipulated that nominations can only be through sectoral lines: "Provided that the nominees, who shall be rank-ordered by their party or organization, shall be distributed among such sectoral groupings as youth, workers, peasant, teachers, cultural communities and such other sectors as may be provided for by law." PR 428 also had an interesting institutional design for ensuring that no sector monopolizes the seats or overwhelms the other sectors by mandating that a party should spread out its 25 nominations to a number of sectors: "Provided, further, that

there shall not be more than five nominees for every sector” (Villacorta et al., 1986).

Crucially, Section 4 of PR 428 followed PR 334 on having just one voters’ list that allowed voters two votes, the first for district elections and the other for the party-list system: “In the election of representatives to the national legislature, each voter shall cast a vote for a representative of his district as well as for a political party or organization registered under the party-list system” (Villacorta et al., 1986). This is a vast improvement from the initial position of Villacorta in his exchange with Rodrigo. It is also a significant advance from Tadeo’s earlier stance on election of sectoral representatives by members of sectoral organizations. With this reorientation, the implication of this section is that the nominees must come from their sectors but the voting will be done by the nation at large.

Similar to PR 334, Section 5 was about the threshold, ceiling, and formula of their proposed electoral system for 20% of legislators. It adopted both the 2.5% threshold to get a seat and 50% ceiling of PR 334 but designated a different rule on the electoral formula.<sup>8</sup> While the Monsod et al. resolution assigned Comelec to arrive at the electoral formula for proportionality, PR 428 provided its own proportionality rule of one seat per 2.5% of votes cast: “A party shall be entitled to a seat for every two and one-half per cent (2.5%) of the total votes cast in the election” (Villacorta et al., 1986). This is an erroneous formulation because the maximum number of seats that this rule can distribute is 40 seats. Since there is no other provision in the section on how to fill up all the seats if there will be vacancies, then this will result in a permanent incapacity to fill up the 50 seats mandated by its own proposed resolution. Section 6 of PR 428 was the exact clone of Section 6 of PR 334 on the Comelec’s responsibility for promulgating the rules and regulations to implement the elections.

### **Committee Report No. 22**

On July 21, 1986, Committee Report (CR) No. 22, titled “Resolution Proposing an Article on the National Assembly,” filed by the Committee on the Legislative was read by the secretary-general. While not members of the Committee on the Legislative, Monsod and Villacorta were listed as among the co-sponsors of this committee report. Section 2 of the committee report juxtaposed sectoral and party-list representation, adopted the 20% share found in both PR 334 and 428, and added the phrase “as provided by law:”



“SECTION 2. The National Assembly shall be composed of not more than two hundred and fifty members who shall be elected from legislative districts apportioned among the provinces and cities in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected from the sectors and party list. The sectoral and party list representatives shall in no case exceed twenty percent of the entire membership of the National Assembly.” (The Constitutional Commission of 1986, II, p. 41)

In the interview with Villacorta, he explained that the juxtaposition of sectoral representation and party-list representation was a product of a compromise brought about by meetings and the public hearings of the Committee on the Legislative, some of which he got to attend. When asked why the 20% did not go higher or lower, both Villacorta and Tadeo argued that the figure was the maximum that the more conservative commissioners, who according to them constituted the majority bloc in the commission, were willing to concede to the radical idea of sectoral representation. They said that anything higher than the 20% would have triggered a stronger reaction from the conservative block against the idea of sectoral representation. Monsod, in his interview, strongly challenged their recollection and argued that there was no big debate at that time on the figure of 20% that divided the commissioners because “everybody accepted this as a reasonable percentage.” When Villacorta was asked why the election of representatives from the sectors and party list was now “as provided by law” which contradicted his initial position that the Constitutional Commission be the one to write the mechanics of sectoral representation, he explained that in the context of competing views, the phrase was “the escape clause to pave the way for more modifications” which allowed the “nationalist bloc” to which he belonged “negotiating leverage” on sectoral representation.

No debate on the sectoral and party-list topic happened on July 21 because much of the day was spent by the commissioners on intensely debating first whether the proposed legislature was going to be unicameral or bicameral. In a dramatic vote, the unicameral proposal of the Committee on the Legislative was defeated by the narrowest margin of one vote: 22 votes for the unicameral versus 23 for the bicameral. At the very least, the bicameral vote meant the reworking of Section 2 and the changed reference from National Assembly to the House of Representatives because both sectoral and party-list proposals worked on the basis of a unicameral legislature.<sup>9</sup>

### **Villacorta and Monsod Presentations**

On July 22, Commissioner Davide continued his sponsorship speech for CR No. 22. Rodrigo complained to Davide that he had neither “seen nor heard any practical way of implementing this election by sector and party list.” Referring to sectoral and party-list representation, Commissioner Teodoro Bacani also made an inquiry on “[w]hat is embraced within the scope of these words?” It was in this context that Davide called on Villacorta to explain sectoral representation, and on Monsod to explain party-list representation.

Villacorta responded that the mechanics for sectoral representation were in fact already contained in PR 334 and PR 428 where he accurately described the latter as “actually an amendment of the first.” However, in a fatal move that would undermine the cause of sectoral representation, especially in light of the impending withering attack against pure sectoral representation that Monsod would launch a few moments later, Villacorta chose neither to discuss the contents of PR 428 nor to explain the mechanics of sectoral representation that were being demanded by the commissioners. Instead, he emphasized the urgency of sectoral representation especially in the face of yesterday’s revival of the Senate. Villacorta went on to enumerate the advantages of sectoral representation by quoting from the draft constitution proposal of the University of the Philippines Law Constitution Project on the advantages of multisectoral representation and ended his speech by quoting a few lines from two poems of Rodrigo. So even after Villacorta’s explanation, it was still unclear how sectoral representation will work and how it complemented or was different from the party-list representation that Monsod was going to present.

When it was Monsod’s turn to speak, he delivered a scathing criticism of the impracticability of a separate sectoral representation and argued for the superiority of a party-list representation that absorbed sectoral parties along with other political parties. He opened his speech by first distancing his party-list proposal from sectoral representation: “I would like to make a distinction from the beginning that the proposal for the party list system is not synonymous with that of the sectoral representation.” It is also this opening quotation which served as the start of the kilometeric five-page quotation of the constitutional commissioners by the Supreme Court’s decision in *Atong Paglaum*. Monsod then gave a critique of pure sectoral representation which encapsulated the criticisms raised by other commissioners since sectoral representation was proposed by Villacorta in June:

MR. MONSOD: Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the

sectors....In effect, a sectoral representation in the Assembly would mean that certain sectors would have reserved seats; that they will choose among themselves who would sit in those reserved seats. And then, we have the problem of which sector because as we will notice in Proclamation No. 9,<sup>10</sup> the sectors cited were the farmers, fishermen, workers, students, professionals, business, military, academic, ethnic and other similar groups....The problem we had in trying to approach sectoral representation in the Assembly was whether to stop at these nine sectors or include other sectors. And we went through the exercise in a caucus of which sector should be included which went up to 14 sectors. And as we all know, the longer we make our enumeration, the more limiting the law becomes because when we make an enumeration we exclude those who are not in the enumeration. Second, we had the problem of who comprise the farmers. Let us just say the farmers and the laborers. These days, there are many citizens who are called "hyphenated citizens." A doctor may be a farmer; a lawyer may also be a farmer. And so, it is up to the discretion of the person to say "I am a farmer" so he would be included in that sector. The third problem is that when we go into a reserved seat system of sectoral representation in the Assembly, we are, in effect, giving some people two votes and other people one vote. (The Constitutional Commission of 1986, II, p. 85)

Seen from the vantage point of PR 428, the first two criticisms of Monsod are debatable and the third criticism is invalid. The first criticism on the "dilemma of choice of sectors" is valid because any listing of sectors can easily become unmanageable, exclusionary, and arbitrary, but it is also true that it is not an insurmountable dilemma. The Constitutional Commission or Congress can vote on the acceptable criteria for inclusion of sectors and/or identify these sectors themselves, including the possibility of catch-all sectors, and then task Comelec to ensure that the number of participating parties is manageable. PR 428 can accommodate this possibility because although it identified certain sectors, it also included the rule "such other sectors as may be provided for by law." The second criticism on the "hyphenated citizens" is valid if understood in terms of the hyphenated candidate where a person "cheats" by running as a member of another more downtrodden sector, such as a lawyer-farmer who runs as a farmer. However, this "hyphenated citizens" argument is a problem in terms of the hyphenated voter only if there will be separate or multiple voters' lists. This brings the discussion to the third criticism of Monsod which is that sectoral representation was based on separate voters' lists resulting in inequality of votes. This is clearly no longer applicable to PR 428 since it operated with only one voters' list.

But without the details of PR 428 appearing in the transcripts and seen from the vantage point of Villacorta's and Tadeo's previous explanations of separate voters' lists, all three criticisms of Monsod remained valid. As Monsod explained in the interview, "at that time what was being talked about was that there will be elections for sectoral representatives and the ones who can vote for sectoral representatives are those who belong in that sector." Monsod shared in the interview (personal communication, February 13, 2014) that "from the beginning" the issue of separate voters' lists "was already settled in the minds of majority of the commissioners [that] we are not going to create seats that only certain people can stand for and vote for."

After enumerating his three criticisms, Monsod then in a methodical and meticulous manner explained "the mechanics, the purpose and objectives" of his proposed party-list system that was in stark contrast to the way Villacorta explained his proposed sectoral representation. Although Monsod never mentioned PR 334, his explanation of the party-list mechanics moved along its lines. He spelled out that the party-list system operates by giving every voter two votes "so there is no discrimination" and took pains to make the commissioners understand what the voter will encounter in a party-list ballot:

MR. MONSOD: First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO,<sup>11</sup> Magsasaka or a regional party in Mindanao. (The Constitutional Commission of 1986, II, p. 86)

Not only does the party-list system avoid the problem of hyphenated citizens of sectoral representation but makes it a virtue by allowing non-members of the sector to vote for a representative of that sector in Congress as Monsod argued that "One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party." Monsod then discussed his proposed ceiling which he brought down to 15 seats from the 25 seats of PR 334 and also the mechanics and sample computations of his proposed threshold which he maintained at the 2.5% figure of PR 334. He closed his presentation by declaring that the purpose of the party list is to "open the system" to political parties that have a national or sectoral constituency but "may not have the constituency to win a seat on a legislative district basis." These parties were to get a number of seats in

the legislature proportional to their votes in the party-list elections (The Constitutional Commission of 1986, II, p. 86).

In an exchange quoted by both the *Atong Paglaum* decision and the separate concurring opinion of Associate Justice Arturo Brion, Monsod after his presentation was asked a question by Bacani. In his answer, Monsod gave an even stronger disavowal of a separate sectoral representation, seeing it as a superfluity in a party-list system which includes sectoral parties:

Bishop BACANI: Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD: As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the sectors would be included in the party list system. They can be sectoral parties within the party list system.” (The Constitutional Commission of 1986, II, p. 86)

In the interview, Monsod (personal communication, February 13, 2014) was asked why he threw a monkey wrench into the idea of a separate “sectoral and party list.” He answered that “the party list was supposed to address this issue of lack of representation [of] certain parties, certain areas, and certain sectors” but the idea of a separate sectoral and party list stacked two more systems on top of the district system, creating three systems in the House. For him, this set-up “confuses our objective and second, it will confuse the voters.” According to Monsod, the commissioners were themselves confused so that when Monsod was asked to make his July 22 presentation, he saw it as a good opportunity to “clarify the issues and what I was advocating as against others.” But he also saw that it was his task to reach out to the proponents of sectoral representation by “opening the doors and saying that we could actually work together because you could put the sectors within the party list.”

Later that day, the Committee on the Legislative filed the amended CR No. 22 to reflect the adjustments brought by the shift from a unicameral to a bicameral legislature. The proposal for sectoral and party-list representation was moved from Section 2 to Section 5, the section where it ended up in the 1987 Constitution. Section 5 of the amended report read as follows:

SECTION 5. The House of Representatives shall be composed of not more than two hundred and fifty members who shall be elected from legislative districts apportioned among the provinces and cities in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected from the sectors and party list. The sectoral or party list representatives shall in no case exceed twenty percent of the entire membership of the House of Representatives. (The Constitutional Commission of 1986, II, p. 102)

### **The Monsod Amendment**

On July 25, Monsod introduced his amendment to Section 5 of the amended CR No. 22 changing the phrase “shall be elected from the sectors and party list” to “shall be elected through a party list system of registered national, regional or sectoral parties or organizations.” Commissioners Davide, Aquino, and Eulogio Lerum were the first three commissioners to ask Monsod some questions. Davide asked two questions on the nature of sectoral participation to which Monsod answered that any sector or any party that meets the criteria of the Comelec and the Constitution may register in the party list. After Lerum, Tadeo appealed to the body to make the party list exclusive to the marginalized sectors and not allow the entry of traditional political parties. According to Tadeo, the legislative district was already reserved for traditional political parties. If allowed entry, these traditional political parties would also dominate it and edge out the sectoral groups because the latter have limited resources to match the former’s. This was the context when Villacorta asked Monsod to yield to an amendment to his amendment that triggered the intense debate between Monsod, on one hand, and Villacorta and Tadeo, on the other:

MR. VILLACORTA: Would Honorable Monsod yield to an amendment to his amendment? I would like to propose the following amendment, also for lines 28 to 29: THIRTY PERCENT OF THE SEATS SHALL BE ALLOCATED EQUALLY BETWEEN THE SECTORS AND THE PARTY LIST OF REGISTERED PARTIES OR ORGANIZATIONS. (The Constitutional Commission of 1986, II, p. 254)

Villacorta’s argument for his new 15% allocated exclusively for sectoral candidates was that the Monsod amendment allowing “veteran politicians” to compete with candidates of the marginalized sectors turned the original 20% set aside by the framers of the Constitution for the party list to a site for their “political massacre.”

Monsod did not categorically reject Villacorta's proposed amendment to his amendment. Instead, he again attacked sectoral representation on the "dilemma of choice of sectors" that he raised in his presentation three days earlier. Monsod asked Villacorta to "tell us which sectors he considers marginalized and should be given, in effect, the concept of reserve seats" with the warning that once he had done that "we would exclude everybody else who would not belong to these sectors." Villacorta gave below what he described as his "offhand" answer:

MR. VILLACORTA: This can be a subject of discussion now, but offhand, I can think of the following classification: (1) rural and urban workers; (2) farmers and fishermen; (3) cultural communities; (4) women; (5) youth; and (6) professionals, including artists and health workers. (The Constitutional Commission of 1986, II, p. 255)

When Monsod asked a question about the professionals, Tadeo joined the fray by offering his own criteria for selecting marginalized sectors. From an institutional design perspective, what is most remarkable with the criteria was the overwhelming complexity they will need to conceptualize, measure, and implement:

MR. TADEO: In deciding which sectors should be represented, the criteria should adhere to the principle of social justice and popular representation. On this basis, the criteria have to include: 1. The number of people belonging to the sector; 2. The extent of "marginalization," exploitation and deprivation of social and economic rights suffered by the sector; 3. The absence of representation in the government, particularly in the legislature, through the years; 4. The sector's decisive role in production and in bringing about the basic social services needed by the people. (The Constitutional Commission of 1986, II, p. 255)

Tadeo then ticked off eight marginalized sectors and the population figures for seven of them. These were the peasants (34 million), labor (12.235 million), urban poor (5 million), teachers (500,000), health workers and other professional artists and cultural workers (465,966), youth (14.6 million), women (24 million), and indigenous communities for which Tadeo initially did not provide any figures (The Constitutional Commission of 1986, II, p. 255). What Monsod saw with these figures was confirmation of his argument on the hyphenated citizens since if totaled, Tadeo's population of sectors was close to 80 million<sup>12</sup> which meant that there were millions of people who were counted in at least more than one sector. Monsod raised again the question of the hyphenated citizen and the problem of the multiple voters' lists:

MR. MONSOD: [H]ow do we determine who vote[s] within each sector? Suppose it is a woman who is 18 years old and who belongs to the rural poor, does she vote as a woman, as a youth, or as a rural poor, or does she vote for all three? In effect, if she votes for all three, she has four votes – one for legislative district, one for the woman sector representative, one for the peasant poor representative, one for the youth representative. How do we solve this problem in operational terms? (The Constitutional Commission of 1986, II, p. 256)

Tadeo did not answer directly, prompting Monsod to reformulate his question on the multiple voters' lists: "Papaano po nating malalaman kung sino ang boboto para sa representative ng women's sector, lahat ng babae, hindi po ba? Paano po iyong rural poor?" [How would we know who will vote for the representative of the women's sector, all the women is it not? How about the rural poor?] When Tadeo finally answered this central criticism of sectoral representation that had been raised a number of times now by the commissioners (and which should have been resolved by drawing on the single voters' list of PR 428 and pointing out that it operated the same way as the voters' list of Monsod), his reply was a non-answer: "Ang mechanics po ay isinumite namin kay Commissioner Villacorta. Nandoon na po kung ano ang mga dapat na gawin" [We have submitted the mechanics to Commissioner Villacorta. They contain what are needed to be done] (The Constitutional Commission of 1986, II, p. 256).

The two answers from Villacorta and Tadeo prompted Monsod to explain the balancing act that his party-list system was trying to achieve which was to "open up the political system to a pluralistic society through a multiparty system" but to do it in such a manner that aims to "avoid the problems of mechanics and operation in the implementation of a concept that has very serious shortcomings of classification and of double or triple votes." He explained that his design for a ceiling which had now gone down to 10 seats from the 15 seats of July 22 was meant to ensure that even with two major parties entering the party list, their maximum take together is 20 seats, leaving 30 seats still up for grabs. He also offered to lower his 2.5% threshold to 2% to make it easier for smaller parties to get a seat.

Villacorta did not respond to Monsod's institutional design argument but attacked the straw-man position that Monsod's party list worked on the assumption that equal chances existed between traditional and sectoral candidates. He also wondered aloud why Monsod, who "agrees in principle in giving a bigger voice to the marginalized sectors, would be against the idea of reserve seats." As for Monsod's opposition to giving reserved seats to sectoral representation, Villacorta complained



that if the commissioners apportioned 80% of the lower house to district representatives, they in a sense also “are reserving seats for politicians.”

It is this last comment of Villacorta on reserved seats that would be the immediate trigger for the debate where the Supreme Court’s *Atong Paglaum* would quote both Villacorta and Tadeo to support its decision to allow the participation of political parties in the party list through its sectoral wing. In response to Villacorta’s comment on reserved seats, Monsod denied that the legislative district was reserved only for politicians. He then asked Villacorta if a less traditional party like the Christian Democrats and Social Democrats will be allowed to participate in both the district and party-list elections to which Villacorta agreed, as long as “they will be fielding only sectoral candidates.” Then Monsod asked the key question of what if it were a big traditional political party like UNIDO that would run, to which Villacorta gave an affirmative response:

MR. MONSOD: May I be clarified on that? Can UNIDO participate in the party list system?

MR. VILLACORTA: Yes, why not? For as long as they field candidates who come from the different marginalized sectors that we shall designate in this Constitution. (The Constitutional Commission of 1986, II, p. 25)

Monsod next asked by way of an example whether a nominee who was not a member of the sector can represent that sector: “Suppose Senator Tañada wants to run under BAYAN group and says that he represents the farmers, would he qualify?” Villacorta’s negative answer actually undermined the *Atong Paglaum* argument that a nominee’s track record for representing the marginalized and underrepresented sectors is enough: “No, Senator Tañada would not qualify.”<sup>13</sup> Monsod again raised the logical consequence of this qualification which is the dilemma of “who constitute the members of the sectors” that he had posed since his July 22 presentation: “But UNIDO can field candidates under the party list system and say Juan de la Cruz is a farmer. Who would pass on whether he is a farmer or not?” (The Constitutional Commission of 1986, II, p. 257).

Before Villacorta could answer, Tadeo jumped in and declared that “[p]olitical parties, particularly minority political parties, are not prohibited to participate in the party list election if they can prove that they are also organized along sectoral lines.” Monsod replied that with that argument, Tadeo was in fact saying that “all political parties can participate because it is precisely the contention of political parties that

they represent the broad base citizens and that all sectors are represented in them.” Tadeo responded that if political parties were permitted, “[l]alamunin mismo ng political parties ang party list system” [political parties themselves will gobble up the party-list system] and reiterated his point earlier that the district seats had already been reserved for political parties. Similar to his response to Villacorta, Monsod dismissively answered that anyone can run in district elections. He then asked Villacorta and Tadeo the same UNIDO question to which both gave a definitive affirmative response, permitting the entry into sectoral representation of political parties that also participate in the single-member district elections:

MR. MONSOD: [M]y question to Commissioner Villacorta and probably also to Commissioner Tadeo is that under this system, would UNIDO be banned from running under the party list system?

MR. VILLACORTA: No, as I said, UNIDO may field sectoral candidates. On that condition alone, UNIDO may be allowed to register for the party list system.

MR. MONSOD: May I inquire from Commissioner Tadeo if he shares that answer?

MR. TADEO: The same.

MR. VILLACORTA: Puwede po ang UNIDO, pero sa sectoral lines [UNIDO is allowed but along sectoral lines]. (The Constitutional Commission of 1986, II, p. 257)

In the interview, Villacorta (personal communication, February 1, 2014) was asked to elaborate on why he allowed the participation of traditional political parties as long as they are organized along sectoral lines. He said that at that time, he “saw nothing wrong with that because it is possible that an established political party would come up with both the usual district candidates and also representatives of marginalized sectors. In fact, that is an advantage because the marginalized representatives will have more chances in winning.” He emphasized that as far as the marginalized are concerned, his goal “was to have them succeed in an election [and] although my original mechanics was that they be elected by their own sectors; but since the agreement was that the general electorate will be the ones to choose not only the district candidates but also the party list, then I agreed to it.” On the other hand, in the interview of Tadeo (personal communication, February 7, 2014), he admitted that he erred: “Mali, mali ako roon” [Wrong, I was wrong there]. He

strongly regretted answering Monsod's UNIDO question in the affirmative, especially when informed that his answer was used by the Supreme Court in 2013 to justify the entrance of district-based political parties in the party list through their sectoral wing. He saw the admission of traditional political parties as a mistake because although these political parties may be organized along sectoral lines, they are nevertheless still traditional politicians: "Nagkamali ako riyan kasi trapo 'yun. Bakit hahayaan mo silang makapasok...Bagaman sectoral 'yan, trapo pa rin" [I erred there because they are traditional politicians. Why should you allow them entry...Even if they are sectoral, they are still traditional politicians]. In Monsod's interview (personal communication, February 13, 2014), he replied "no" when asked whether he was surprised by the affirmative answers of Villacorta and Tadeo. This was because he had previously heard of their position before the actual debate and just wanted to put this clearly on record: "[M]araming usapan, maraming deliberation sa floor, so pinapa-clarify ko lang kung tama 'yung narinig ko sa mga usapan and so on para malagay sa record ng Constitution" [There were many talks, many deliberations on the floor, so I only want it clarified if what I heard from those talks and so on are correct in order they can be included in the record of the Constitution].

With the identical response of Villacorta and Tadeo on UNIDO, it was time for a reprise of the earlier exchange on the dilemma of "who constitute the members of the sectors" as Monsod again asked who would adjudicate the veracity of the claim that the nominee belongs to the sector he was representing. This time, it was Tadeo, not Villacorta, who answered. Again the response of Tadeo, as Monsod tried to pin him down on the complexity of sectoral implementation, undermined *Atong Paglaum's* position that the sectoral nominee need not be a member of the sector as Tadeo outlined steps to ascertain that both the party and the nominees were indeed members of the sectors they claimed to represent in a manner that was in fact closer to *Ang Bagong Bayani's* requirements for sectoral representation:

MR. MONSOD: Sino po ang magsasabi kung iyong kandidato ng UNIDO ay hindi talagang labor leader or isang laborer? Halimbawa, abogado ito [Who will say if the candidate of UNIDO is not really a labor leader or a laborer? For example, he is a lawyer].

MR. TADEO: Iyong mechanics [The mechanics].

MR. MONSOD: Hindi po mechanics iyon [It is not the mechanics] because we are trying to solve an inherent problem of sectoral representation. My question is: Suppose UNIDO fields a labor leader, would he qualify?

MR. TADEO: The COMELEC may look into the truth of whether or not a political party is really organized along a specific sectoral line. If such is verified or confirmed, the political party may submit a list of individuals who are actually members of such sectors. The lists are to be published to give individuals or organizations belonging to such sector the chance to present evidence contradicting claims of membership in the said sector or to question the claims of the existence of such sectoral organizations or parties. (The Constitutional Commission of 1986, II, p. 257)

After the Villacorta-Tadeo-Monsod debate, Ople sympathetically interpellated Monsod, leading the latter to elaborate further on how his party-list proposal was in the words of Ople “a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties.” The Monsod amendment was never put to a vote that day because Monsod himself deferred the consideration of his motion on the grounds that “there are many other counter proposals and issues that have to be discussed” on his amendment (The Constitutional Commission of 1986, II, p. 258-259).

## **FINAL OUTCOME OF THE PARTY-LIST REPRESENTATION IN THE 1986 CONSTITUTIONAL COMMISSION**

### **Villacorta-Monsod Amendment**

On August 1, 1986, Villacorta declared to the body that a “compromise formula” has been arrived at between proponents of sectoral representation and of the party-list system. This declaration would be the basis of the infamous one-sentence quote in *Ang Bagong Bayani* that was used to hoist the decision that the intent of the framers of the Constitution was that the party-list system was exclusively for the marginalized and underrepresented. The paper quotes the full paragraph to show how egregiously wrong the *Ang Bagong Bayani* reading of Villacorta’s statement was:

MR. VILLACORTA: I would like to report that the proponents of sectoral representation and of the party list system met to thoroughly discuss the issues and have arrived at a compromise formula.

On this first day of August 1986, we shall, hopefully, usher in a new chapter in our national history by giving genuine power to our people in the legislature. Commissioner Monsod will present to the Committee on the Legislative the amendment to Section 5 which we have agreed upon. May we request that Commissioner Monsod be recognized. (The Constitutional Commission of 1986, II, p. 561)

*Ang Bagong Bayani* did not quote the first sentence which would have alerted readers that Villacorta, the main proponent of sectoral representation, had already agreed to a compromise formula. The decision also slyly ignored the third sentence which would have directed readers that the compromise formula was to be explained by Monsod, the main proponent of the party-list system that simply absorbs sectoral parties among other political parties, and not Villacorta. This was the “erroneous reading” of *Ang Bagong Bayani* decried by Brion in his separate concurring opinion to *Atong Paglaum*: **“Its main mistake is its erroneous reading of the constitutional intent, based on the statements of a constitutional commissioner that were quoted out of context, to justify its reading of the constitutional intent”** (Brion, 2013, emphasis in the original).

The compromise formula struck was that the 20% was allotted to the party-list system of national, regional, and sectoral parties as Monsod wanted, but for the next two terms after the ratification of the Constitution, half of the seats of the party list were reserved for the now identified four sectors of labor, peasant, urban poor, and youth as a concession to the advocates of sectoral representation. The deal was clearly advantageous to Monsod’s proposal as the party list became the permanent feature while the pure sectoral position became just transitory, good for only two terms and for only half of the seats available, which makes the triumphant reading of the *Ang Bagong Bayani* of August 1 for sectoral representation even more perplexing if not perverse. Also found in the compromise deal was the possibility that the sectoral representatives during the two-term transition were simply going to be appointed (“selected”). The compromise formula thus replaced the unresolved July 25 Monsod amendment:

MR. MONSOD: Madam President, the proposal that we discussed and arrived at consists of amending page 1, line 29 of the draft Article on the Legislative, beginning with the word “elected,” and which reads as follows: THROUGH A PARTY LIST SYSTEM OF REGISTERED NATIONAL, REGIONAL AND SECTORAL PARTIES OR ORGANIZATIONS AS PROVIDED BY LAW. THE PARTY LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PERCENT OF THE TOTAL MEMBERS OF THE HOUSE OF

REPRESENTATIVES PROVIDED THAT FOR THE FIRST TWO TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION TWENTY-FIVE OF THE SEATS ALLOCATED TO PARTY LIST REPRESENTATIVES SHALL BE FILLED BY SELECTION OR ELECTION, AS PROVIDED BY LAW FROM THE LABOR, PEASANT, URBAN POOR AND YOUTH SECTORS. (The Constitutional Commission of 1986, II, p. 561)

When asked in the interview how did the compromise come about, both Monsod (personal communication, February 13, 2014) and Villacorta (personal communication, February 1, 2014) answered that just like many other provisions in the Constitution where there were initial disagreements, the Monsod-Villacorta amendment was a product of a series of meetings to come up with a reasonable compromise. Villacorta recalled that it was Ople who served as the main negotiator who brokered the deal between the Villacorta camp and the Monsod camp and “the one who provided the mechanics, the proposed revisions on the party-list system was Commissioner Monsod.” On the other hand, Monsod could no longer remember who proposed the compromise of the two terms. When asked why the term “selection” was added as a mode to fill the sectoral seats, Monsod explained that the term opened the option of appointment of the sectoral representatives by the executive or another body “who would then be allowed na mag-nominate or mag-appoint para ma-fill up agad ‘yung 25 [seats] para at least until hindi pa nakahanda sila sa electoral battle, mayroon nang boses d’un ‘yung mga sectors” [who would then be allowed to nominate or to appoint in order to immediately fill up the 25 (seats) so that at least until they are not yet prepared for the electoral battle, the sectors will already have a voice there].

Although Villacorta claimed that this compromise formula involved the “proponents of sectoral representation,” there would be a strong and impassioned reaction against this Monsod-Villacorta amendment among the commissioners identified with sectoral representation and led by no less than Tadeo. Recovering from the yes answer Tadeo gave on July 25 to the question on whether traditional political parties can enter the party list as long as this was through their sectoral candidates, he now again condemned the idea of allowing the entry of traditional political parties into the party list which again makes *Atong Paglaum’s* selective citation of Tadeo problematic. He attacked: “Yon bang pumasok sa legislative district, ilagay nating halimbawa—UNIDO, PDP-Laban, Liberal, Nacionalista, PNP—ay hindi na kasali sa party list? Hindi po. Kasama rin ang mga partidong ito. Nahawakan na nila ang 200 legislative seats, hahawakan pa rin nila ang party list—itutulak nila ang sectoral. Lalamunin din ng mga partidong ito ang sectoral. ‘Yon po ang aming tinututulan” [Are those that entered the legislative district, for

example—UNIDO, PDP-Laban, Liberal, Nacionalista, PNP—no longer included in the party list? No. These parties are still included. They already hold the 200 legislative seats, they will still hold the party list—they will push out the sectoral. These parties will also gobble up the sectoral. This is what we are opposing.] (The Constitutional Commission of 1986, II, pp. 562-563). Tadeo then gave an impassioned plea to take out the phrase “provided that for the first two terms after the ratification of this Constitution” of the Monsod-Villacorta amendment. This deletion was to give the last remaining 10% of seats of the House of Representatives permanently to the marginalized sectors. He bemoaned the irony that the authoritarian Marcos was willing to give 14 seats to sectoral representation in his 1973 Constitution while the intention of this Constitution, which was being written in the time of people power, was on limiting the marginalized sectors.

Lerum, Aquino, and Joaquin Bernas spoke in support of Tadeo’s amendment to the Monsod-Villacorta amendment. On the other hand, Ople spoke in defense of the Monsod-Villacorta amendment while Rustico de los Reyes, Jr. sought to find a middle position between the two amendments. Bernas labeled their position as arguing for the “permanentizing” of reserved sectoral seats. After a number of exchanges among different commissioners on the Monsod-Villacorta amendment, Aquino moved for a new amendment co-sponsored by Tadeo and Bernas to the Monsod-Villacorta amendment that sought the permanentizing of reserved seats and that chose election as the sole mode of choosing sectoral representatives:

MS. AQUINO: [T]he amendment would read: “THROUGH A PARTY LIST SYSTEM OF REGISTERED NATIONAL, REGIONAL AND SECTORAL PARTIES OR ORGANIZATIONS AS PROVIDED BY LAW. THE PARTY LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY PERCENT OF THE TOTAL MEMBERS OF THE HOUSE OF REPRESENTATIVES. TWENTY-FIVE OF THE SEATS ALLOCATED TO PARTY LIST REPRESENTATIVES SHALL BE FILLED BY ELECTION, AS PROVIDED BY LAW, FROM THE LABOR, PEASANT, URBAN POOR AND YOUTH SECTORS.” (The Constitutional Commission of 1986, II, p. 574)<sup>14</sup>

In the run-up to the voting, Commissioners Quesada, Brocka, and Garcia spoke to support the Aquino-Bernas-Tadeo amendment and Commissioners Braid, Sarmiento, and Villegas spoke to reject it. The main thread tying the pro-permanentizing commissioners and Aquino and Bernas who spoke earlier was the argument that the gross economic and social inequalities that these sectors suffer from means that they need legislative seats to address these inequalities. But it is these same inequalities that prevent the labor, peasant, urban poor, and youth sectors from

competing in elections against the more entrenched elite political parties. Addressing these inequalities through reserved seats would take a long time; hence, it is not wise to put a fixed number of terms for reserved seats. On the other hand, the main thread tying the anti-permanentizing commissioners and Ople who spoke earlier was the argument that sectoral groups are indeed faced with major disadvantages when they compete for legislative seats that is why they should be given reserved seats as they build up their strength for electoral competition. But this should just be a temporary protection as reserved seats in the long-term will be counterproductive because protection from competition would stunt the development of sectoral groups into full-fledged political parties that can stand up to, and even form alliances with, traditional political parties in electoral contests. The design should thus aim for a balance between an initial protection and a challenge to use this head start to prepare for the inevitable future competition; hence, the time period should be fixed.

What is most interesting in this crucial debate on permanentizing is that even the pro-permanentizing side seemed to have implicitly accepted this questionable argument by the anti-permanentizing side that the cost of reserved seats would be the stunting of the development of sectoral groups because they would be insulated from outside competition. From an institutional design perspective, permanentizing was still going to be *competitive enough* to result in many of the good things in the anti-permanentizing side's wish list that the threat of outside competition would bring. This is for the crucial reason that the permanentizing side was insisting on the election and not the appointment of the sectoral representatives. In fact, they were the ones who moved to delete the word "selection" in the Monsod-Villacorta amendment. Since there is nothing to indicate that by August 1, 1986 they were not working on the same single voters' list of Monsod, this meant that the sectoral candidates will be voted at large by the whole nation. With only 25 seats up for grabs for the multiplicity of sectoral groups, then there would be enough competition among them to run campaigns at the national or regional levels. Of course, making it a free-for-all to include even traditional political parties would be more competitive but the point is that permanentizing would be competitive enough because of the limited seats, large electorate, and the likely multiplicity of sectoral groups running. Further, since the electorate is national, electoral alliances with traditional political parties running national candidates are a possibility as immediately as the first party-list elections. Once elected, legislative alliances in the House of Representatives between sectoral groups and more established political parties are also immediately possible.



The Aquino-Bernas-Tadeo amendment was defeated by a narrow vote of 22 against versus 19 for. This defeat was the story recounted in the dissenting opinion by Justice Vitug in *Ang Bagong Bayani* and cited at length by *Atong Paglaum* because it was “clearly explained.” However, Vitug got many of the key facts wrong. He said that the initial position of the group headed by Villacorta was that “half were to be reserved to appointees from the marginalized and underrepresented sectors.” His version was that the initial compromise offer by “advocates for permanent seats for sectoral representatives” was “that the party-list system be open only to underrepresented and marginalized sectors” and he talked of the “Villacorta group” as the one who negotiated for sectoral representation throughout (Vitug, 2013).

After the close voting, the session was suspended to allow the opposing camps to cool off and strike a new compromise. When it resumed, Sarmiento proposed a “happy compromise” of three consecutive terms instead of the initial two terms which would not be opposed by anyone during the voting (29 for versus none against). When Braid tried to extend it to four terms, her amendment was defeated (22 against versus 10 for).

Having identified the four sectors of labor, peasant, urban poor, and youth earlier, it was also on August 1 that a number of amendments by a succession of commissioners who wanted to include the additional sectors of indigenous cultural minorities and women, exclude the religious sector, and make the listing of the sectors opened by adding the phrase “as may be provided by law” were approved. The final version of the amendment that day as read by Davide went thus: “SHALL BE FILLED, AS PROVIDED BY LAW, BY SELECTION OR ELECTION FROM THE LABOR, PEASANT, URBAN POOR, INDIGENOUS CULTURAL COMMUNITIES, WOMEN, YOUTH AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR” (The Constitutional Commission of 1986, II, p. 589).<sup>15</sup>

With this amendment, the final version of the party-list provisions that would appear in the Constitution as paragraphs 1 and 2 of Section 5 of Article 6 was almost done. Only stylistic changes remained. On October 8, paragraph 1 of Section 5 of Article 6 was divided into two paragraphs where the second paragraph started exactly as it appears in the present Constitution. The text was exactly the same except for the word “percent” which would be replaced on October 10 by the Committee on Style by the word “per centum.” The day before that, on October 9, the Article on the Legislative was approved on third reading.

### THE SUPREME COURT AND THE 1986 COMMISSION: A SUMMATION

The paper showed that the position adopted on August 1, 1986 by the Constitutional Commission for the party-list system was the Villacorta-Monsod compromise formula as amended. The approved electoral system for 20% of members of the House of Representatives was Monsod's "party-list system of registered national, regional, and sectoral parties or organizations." The concession to Villacorta's position was half of the party-list seats for three consecutive terms were to be reserved seats for sectoral representation. This Villacorta-Monsod proposal won over the Aquino-Bernas-Tadeo "permanentizing" amendment which argued that half of the party-list seats reserved for sectoral representation become permanent instead of the transitory three consecutive terms. In a way, this Aquino-Bernas-Tadeo amendment was also a compromise offer from the earlier position of Tadeo which asked for 20% reserved seats. But as discussed by the paper, the Aquino-Bernas-Tadeo "permanentizing" amendment was defeated by a narrow vote. It was the Villacorta-Monsod proposal as amended that ended in paragraphs 1 and 2 of Section 5 of Article 6 of the Constitution. In short, what was clearly agreed upon was a full-blown party-list electoral system open to both sectoral and nonsectoral parties but with a transitory period during which half of the party-list seats are reserved sectoral seats.

Hence, it is both inexplicable and outrageous how the Supreme Court in *Ang Bagong Bayani* through its ponente Justice Panganiban imposed the ruling that the whole party-list system is exclusive to the marginalized and underrepresented sectors. Beyond the gross distortion made by *Ang Bagong Bayani* of Villacorta's one-sentence quotation discussed earlier by the paper, it is also important to note that the hard-line position imposed by the *Ang Bagong Bayani* ruling was no longer espoused by any of the contending positions that debated the party list on August 1, neither by the winning Villacorta-Monsod compromise formula, nor by the losing Aquino-Bernas-Tadeo permanentizing amendment. In order to address possible loopholes or cheating in this ruling, *Ang Bagong Bayani* also imposed the double qualification that not only the organizations but also the nominees themselves must belong to the marginalized and underrepresented sectors they represent.

For nearly 12 years, this alien ruling was the official interpretation of what supposedly the 1986 Constitutional Commission meant on the party list. While sounding lofty in its ideal of empowering the marginalized sectors, *Ang Bagong Bayani* in fact not only hijacked the country's first experiment on proportional representation but also turned it into a most cruel joke. For after declaring it as strictly for the marginalized, the Supreme Court followed this up with permissive

rulings allowing the participation of dubious party-list groups.<sup>16</sup> On the other hand, the COMELEC, supposedly a constitutional body but controlled by then President Gloria Arroyo, increasingly allowed the participation of pseudo-marginalized parties with the end result that a far greater number of nonmarginalized than marginalized have managed to sneak in to participate and win in successive party-list elections, bumping off less successful but genuine sectoral parties. Among the horde of “marginalized” party-list nominees are relatives of congressmen, senators, governors, and military and police officials; former legislators themselves; retired military and other government officials; members of powerful religious sects; rich businessmen; and, in the ultimate travesty and climax of sorts, a presidential son supposedly representing security guards and tricycle drivers.<sup>17</sup> Ironically, it was the attempt in 2012 of the COMELEC, now under a new leadership appointed by President Benigno Aquino, to start following the *Ang Bagong Bayani* ruling to the letter by disqualifying many of these fake marginalized groups in the coming 2013 party-list elections that would push 52 of these barred party-list groups, *Atong Paglaum* being one of them, to run to the Supreme Court to challenge COMELEC’s authority to disqualify them.

The Supreme Court’s *Atong Paglaum* brought back the clock to August 1, 1986 and correctly rebooted the party-list electoral system as open to both sectoral and nonsectoral parties as envisioned by the 1986 Constitutional Commission. However, as the paper illustrated, there is a serious discrepancy between the position of *Atong Paglaum* that sectoral nominees need no longer be members of the sectors that they represent since a track record of representing their sectors is sufficient and the quotations from Villacorta and Tadeo that it recruited to support its argument for allowing the participation in the party list of traditional political parties through their sectoral wings. Similar to the previous *Ang Bagong Bayani* ruling, these quotations actually insisted that the sectoral candidates must belong to the sectors that they represent. This is especially true with Tadeo. He emphatically insisted that the nominees must be actual members of their sectors; this, *Atong Paglaum* even quoted in full and emphasized in bold letters without realizing that it embarrassingly undermined its own argument on the diminished requirement for sectoral nominees.

## CONCLUSION

The paper tracked down the party-list provisions found in paragraphs 1 and 2 of Section 5, Article 6 of the 1987 Constitution from their origins to their development and final outcome in the 1986 Constitutional Commission. This more complete

picture of the party-list story was done by reviewing the transcripts of the commission and by interviewing key commissioners involved in the sectoral and party-list representation debates to recover their original authorial intent. The commissioners were also asked to shed light on issues that remained unexplained by the transcripts such as the reasons why the advocates of sectoral representation agreed to allow traditional political parties to enter the party list and the backroom negotiations responsible for the compromise struck between advocates of party-list and sectoral representation that would eventually serve as the basis for the party-list provisions in the Constitution. The paper also presented and analyzed three important unpublished proposed resolutions on sectoral and party-list representation filed in the commission. These were Proposed Resolution 35, which was the first resolution to call for multisectoral representation; Proposed Resolution 334, which called for party-list representation; and Proposed Resolution 428, which was a far more developed version of the original Proposed Resolution 35.

The paper showed that the original pure sectoral representation proposal argued that a certain number of representatives in the legislature be entirely reserved for certain sectors of Philippine society. On the other hand, the original party-list representation proposal argued that 20% of representatives in the legislature are to be elected through a party-list system open to both sectoral and geographic (as long as beyond the district level) political parties, organizations, or movements. The paper presented the development of the debate between the two positions and how this debate went clearly in favor of the party-list position. The paper analyzed from an institutional design perspective in political science that the main weaknesses of the sectoral representation position were the lack of mechanics of its proposal and its on-off insistence on multiple voters' lists which allowed its party-list critics to portray pure sectoral representation as impractical and quixotic. Using the transcripts, the paper also flagged the *Ang Bagong Bayani* and *Atong Paglaum* Supreme Court decisions when they have distorted the arguments of the commissioners and the narration of events in the commission in order to impose their own versions of the party-list story. This happened when Justice Panganiban quoted Commissioner Villacorta to buttress the former's position that the party list was exclusively for the marginalized and underrepresented sectors when in fact the latter was talking of a compromise deal which reduced the pure sectoral position to a transitory feature and to only half of the seats available during that transitory period. This also happened when Justice Carpio quoted Commissioners Villacorta and Tadeo as saying that the nominees of the marginalized and underrepresented sectors no longer need to come from the sectors themselves when in fact the two commissioners were insisting that the nominees must still come from the sectors they claim to represent.

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## ENDNOTES

- <sup>1</sup> The scholarly literature that touches on the 1986 transcripts is not much better than the Supreme Court's account. For example, Gutierrez (2010) starts his account of the proceedings on July 25, 1986 which is a full month and a half after the first proposal for sectoral representation was filed. Among the errors of the Gutierrez article are that it misinterprets the original goals of Monsod's party-list proposal; distorts the sequence of the party-list and sectoral representation proposals; and gets the proposals and counter-proposals of Villacorta wrong. Another example is Tangkia and Habaradas (2001) where the first quotation on the transcripts starts even later on August 1. The account is very selective and heavily tilted towards Villacorta's viewpoints. In fact, Monsod was never quoted at all by the article.
- <sup>2</sup> On the role of formal institutions, see Carey (2000). On the overall new institutionalism approach in political science, see the classic March and Olsen (1984).
- <sup>3</sup> Tadeo's sectors as well as those of Villacorta's which were to be enumerated later would easily remind activists of that period that most of these sectors and classes are also listed by the National Democratic Front as represented by its component organizations. For a listing of the 14 allied revolutionary organizations, see National Democratic Front Philippines (n.d.).
- <sup>4</sup> Proportional representation is defined as "an electoral system family based on the principle of the conscious translation of the overall votes of a party or grouping into a corresponding proportion of seats in an elected body" (Reynolds, Reilly, & Ellis, 2005, p. 181).
- <sup>5</sup> Gender quota mandates "that women must constitute a certain number or percentage of the members of a body, whether it is a candidate list, a parliamentary assembly, a committee, or a government." The purpose of having gender quota is "to recruit women into political positions and to ensure that women are not only a few tokens in political life" (International IDEA, n.d.).
- <sup>6</sup> For further reading on Germany's electoral system for its Bundestag, see Saalfeld (2005).
- <sup>7</sup> The term "electoral formula" was never mentioned by the proposed resolution but it is the closest term in electoral system design for what Monsod et al. want Comelec to come up with: "The Commission on Election[s] shall allocate the seats for representatives elected under the party list system in proportion to the votes obtained by each participating party..." (Monsod et al., 1986).

- <sup>8</sup> The term “electoral formula” was also never mentioned by Proposed Resolution 428.
- <sup>9</sup> Key commissioners identified in both the sectoral representation and party-list proposal side voted for the losing unicameral side, knowing very well that the significance of the twenty percent share will be dramatically weakened if there will be an upper house. Commissioner Jose Luis Martin Gascon, who actively supported the sectoral representation cause, attempted to propose party-list representation in the Senate but this would be opposed by Monsod himself and other commissioners and would never really be seriously considered by the body.
- <sup>10</sup> Proclamation No. 9 is the “Law Governing the Constitutional Commission of 1986” issued by President Corazon Aquino on April 23, 1986. Among the many important features of this proclamation are that in Section 2, the appointed membership of the Constitutional Commission is structured according to “national, regional, and sectoral representatives” and in Section 4, these sectoral representatives “shall be chosen among others, from farmers, fishermen, workers, students, professionals, business, military, academic, ethnic, and other similar groups” (Office of the President, 1986).
- <sup>11</sup> UNIDO stands for United Nationalist Democratic Organization. It was an alliance of political parties made up of mostly anti-Marcos traditional politicians. UNIDO formed part of a bigger umbrella coalition of opposition parties under which Aquino ran against Marcos in the 1986 snap elections.
- <sup>12</sup> Philippine Statistics Authority figures show that the population of the Philippines was just 48 million in 1980. Tadeo responded by saying that his count of the population was 55 million and that no double entry happened.
- <sup>13</sup> See also this final answer of Villacorta to this question which pointed to the requirement that candidates of sectoral organizations are organic members of their sectors even as Villacorta virtually jettisoned the need for a vetting process before the election itself: “Madam President, first, Commissioner Monsod has a question which I have not yet answered. He asked who would determine whether or not the candidates who claimed to represent different sectors were bona fide members of those sectors or not. I think the electorate will decide on that” (The Constitutional Commission of 1986, II, p. 258).
- <sup>14</sup> There was a corollary amendment proposed by the Aquino-Bernas-Tadeo amendment which was to put a section in the article on the transitory provision of the 1987 Constitution instructing that “FOR THE FIRST TERM OF CONGRESS FOLLOWING THE ADOPTION OF THIS CONSTITUTION, THE SECTORAL REPRESENTATIVES PROVIDED FOR IN SECTION 5 SHALL BE APPOINTED BY THE PRESIDENT FROM THE LIST OF NOMINEES SUBMITTED BY THE SECTORS.” According to Aquino, this proposal “is addressed to the difficulty of coming out with the mechanics and the logistics of the sectoral elections immediately after the adoption of this Constitution” (The Constitutional Commission of 1986, II, p. 575). This proposal would not be voted on since the commissioners agreed to consider it only if the main Aquino-Bernas-Tadeo amendment was approved.
- <sup>15</sup> On October 1, an amendment proposed by Villacorta, Monsod, Tadeo and 18 other commissioners would be approved after certain revisions and would serve as the basis of Section 7 of Article 18 of the 1987 Constitution. This section states that “Until a law is passed, the President may fill by appointment from a list of nominees by the respective

sectors, the seats reserved for sectoral representation in paragraph (2), Section 5 of Article VI of this Constitution.” From this section, Corazon Aquino would issue Executive Order 198 in June 1987 that allowed her to appoint the first batch of sectoral representatives and expanded the enumerated six sectors in the Constitution into nine, adding the veterans, elderly, and disabled. This constitutional provision was similar to the August 1 proposal by the Aquino-Bernas-Tadeo amendment on the article on transitory provisions that was never voted on by the body.

- <sup>16</sup> See the supplemental rulings of *Ang Bagong Bayani* in January 2002 qualifying the party-list groups Association of Philippine Electric Cooperatives (APEC) and Citizens Battle Against Corruption [CIBAC] (*Ang Bagong Bayani-OFW Labor Party et al. v. Commission on Elections et al.*, 2002) and in June 2003 qualifying Ang Buhay Hayaang Yumabong (BUHAY) and Philippine Coconut Producers Federation [COCOFED] (*Ang Bagong Bayani-OFW Labor Party et al. v. Commission on Elections et al.*, 2003) as legitimate.
- <sup>17</sup> This mad rush of pseudo-marginalized parties was also facilitated by flaws in the institutional design of RA 7941 itself and the subsequent ill-fated interventions of the Supreme Court to address some of these flaws. For example, the low seat threshold of 2% of votes cast for the party-list system of RA 7941 and which was even abolished by the Supreme Court in 2009 in its *BANAT et al. v. Commission on Elections* decision skewed the incentive structure of the party-list electoral system towards party fragmentation of ultra-small, mercenary parties with no real sectoral constituencies that are out to try their luck in winning at least a seat in the party-list elections.

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### Interviews

Interview with Commissioner Christian Monsod, Dasmariñas Village, Makati City, February 13, 2014.

Interview with Commissioner Jaime Tadeo, Polaris Compound, Tandang Sora, Quezon City, February 7, 2014.

Interview with Commissioner Wilfrido Villacorta, Silangang Palma CSSP Faculty Center, University of the Philippines, Diliman, Quezon City, February 1, 2014.

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