

philippine studies

Ateneo de Manila University · Loyola Heights, Quezon City · 1108 Philippines

**The Limits to Legislating Democracy:
A Sketch for a Study
on the Possibility of Legislating Discourse**

Agustin Martin G. Rodriguez

Philippine Studies vol. 50, no. 1 (2002): 93–112

Copyright © Ateneo de Manila University

Philippine Studies is published by the Ateneo de Manila University. Contents may not be copied or sent via email or other means to multiple sites and posted to a listserv without the copyright holder's written permission. Users may download and print articles for individual, noncommercial use only. However, unless prior permission has been obtained, you may not download an entire issue of a journal, or download multiple copies of articles.

Please contact the publisher for any further use of this work at philstudies@admu.edu.ph.

<http://www.philippinestudies.net>
Fri June 27 13:30:20 2008

The Limits to Legislating Democracy: A Sketch for a Study on the Possibility of Legislating Discourse

Agustin Martin G. Rodriguez

Recent Trends in Legislating Democracy

In the last decade of the past millennium, legislation has been passed to institutionalize participatory democracy in the Philippines. These laws are actually enabling laws for the fulfillment of constitutionally mandated structures of governance, but their passage was hard won and came almost a decade after the 1987 Constitution was ratified. I am speaking here of the Local Government Code of 1991 or Republic Act 7160 and the Party List Representation Law of 1995 or Republic Act 7941. These laws allow respectively for the implementation of local autonomy for local government units (LGUs) and the party-list representation system in the House of Representatives. They are considered by civil society advocates as landmarks in the establishment of participatory democracy.

In truth, the long wait for the passing of these laws is not surprising because they are radical reforms of the Republic's governance structures. They both allow for the more meaningful participation of the marginalized in governance, which they accomplish by taking power away from its traditional enclaves. In the case of the Local Government Code, functions and responsibilities, as well as resources and decision making powers were taken from the central government and devolved to local government units. In this way, the grassroots citizenry were given a better chance to meaningfully participate in the governance of their communities.

The party-list system was instituted with similar intentions and with a similar breaking up of power bases. Through the party-list system, the authors of R. A. 7941 wanted to institute a system of representation where the marginalized sectors could have a voice in

Congress by fielding candidates with party-list groups or parties (R. A. 7941 Sec. 2). This system seeks to redress the present system of representation, where only the powerful political parties and political and economic power blocs have a voice in the House of Representatives, by creating a system of election where smaller groups are allowed to compete for House seats separately from the traditional electoral system dominated by entrenched political blocs.

In effect, both systems of governance, if implemented properly, will diffuse traditional political power bases. Because local government units are no longer mere extensions of national government agencies, much power and influence is taken away from the national government. With the Code, local governments are autonomous units of governance able to give a direction to their own communities. This means that they have the power and resources to effectively implement programs they have formulated themselves. They are no longer dependent on national government agencies to determine their governmental programs; neither are they dependent on the national government's favor to receive the budgets for their own programs. This way, governance is in the hands of local government units who are required to institute systems of transparency and participation so that the citizenry can effectively take part in governance and the delivery of basic services.

Similarly, the party-list system ensures that legislative work is no longer the enclave of powerful political parties. Although the party-list representatives are given a token 20 percent representation in Congress, this presence is a potent force that could bring the voice, eyes and ears of the people into Congress. As legislators, party-list representatives could at the least bring the people closer to legislative work. They could not only take the people's concerns to Congress, but they could bring the workings of Congress to the people for their scrutiny. Therefore, the dealings of Congress, which occur in the periphery of the people's consciousness, would be more transparent and responsive.

The fact that the enactment of the constitutionally mandated party-list system and local government autonomy took more than a decade to implement is no cause for wonder. Perhaps the fact that R. A. 79041 and R. A. 7160 were actually signed into law is a greater cause of wonder.

That traditional and powerful interests allowed such democratic institutions to be legislated and therefore threaten their power base shows that an enlightened Constitution can effectively institute political reform. These systems of governance try to establish systems that ensure participatory democracy, and genuine participatory democracy

can cause the erosion of the domination of exclusive powerful interest groups that control a polity.

Therefore the legislation of these institutions of democratic participation is surely a positive first step toward the liberation of the Philippine political system from the kind of predatory elitism that has dominated it.

The Need for Democratic Participation in Contemporary Society

With philosophers like Jurgen Habermas, we have come to realize that the truth of a good society is defined by the lived participation of its members in the discourse that defines society. The truth of a society, what it stands for, how it defines its being a society, its meaning, and its destiny can only be defined by its members engaged in discourse. According to Habermas, the truth of a collectivity emerges in this way: "the members of a collectivity can engage in public deliberations in a spirit of mutual trust, with the goal of coming to an understanding concerning their shared form of life and their identity" (Habermas 1993, 23). Discourse demands the open participation of the stakeholders in a society in articulating their understanding of human existence and human society.

Philosophy in the last century of the past millenium has understood that human historicity bears with it an appreciation of the immensity of what is, and the situatedness of human understanding. Embodied and historical, the human person perceives the immensity of reality from a particular perspective. We understand and utter the eternal coming to presence from the ground of what is from our being in time. The what-is of human society too comes from the eternal ground of what is, and its truth is perceived by human knowers and actors from their particular horizons of understanding. Max Scheler challenges the assumption that there exists a single rational mind that defines reality. He has this to say of human understanding:

the milieu of 'matters of fact' is different for all men and all groups of men, the *sets of essential insights* enjoyed by different subjects (peoples, races, etc.) may also *differ* one from another without prejudice to the self-evident and a-priori nature of the insights, or their indestructible validity. . . . For even if there exists a *realm of essences* which offers a constitutional model for all possible worlds and realities made from matters of fact (not only for our world of possible human milieus), we may still expect—considering that every man and more especially every large group of humanity has a *different* path of access from contingent facts

to that realm—that all mental functions and their laws, which have come into being through the functionalization of essential insights, will show differences in everything which goes beyond the purely formal determinations of objects as such. (1960, 202–3)

The coming to presence of human society has a wealth of meaning as plural and as diverse as the wealth of human experience. Within a single culture, a single society, a single polity, exists what Ortega y Gasset would call a “multi-verse” (1960, 91). The order that is society is born not from an already defined universe with a fixed and defining meaning (Habermas 1993, 59). Rather, it is a plurality of universes defined by the web of interactions between the multiple life-worlds of its members. Each universe of meaning and life-world of its members contributes to the what-is of a society.

This may not be a conscious effort to bring the society into a meaningful whole on the part of the stakeholders in a society. Rather, as each one participates in the life of the whole, each one brings to the whole the peculiarities of the particular universe that s/he has created and inhabits. Therefore, often without deliberation, the participants in a society bring their own universes into the universe of the totality of a society. This totality is an organic, dynamic wholeness that is constantly being defined by all persons who fulfill their lives in that society.

Unfortunately, the mechanisms that shape societies can ossify into totalities that restrict the free participation of members of a society. In many societies, a universe is created from the suppression of its multi-verses by a dominant universe defined by a particular elite. Political structures exist that suppress discourse. Structures of political power and governance could work in such a way that the minority views do not have a venue for participation in the discourse that defines society.

Here we are not speaking only of the life-world discourse, but of formal structures of discourse that eventually define the laws that govern the existence of a polity. Because the power structures that define a society allow only a political and economic elite to occupy legislative seats or to run for national or local government office, there come into existence marginalized classes incapable of articulating their universe in the discourse that defines law.

Thus, the laws that define the life-world and systems of a society reflect the perception and understanding of a certain class or classes of people entrenched in the power structures defining the legal structures of a society.

Such a societal situation is unfortunate because the legal or systemic

and formal definition of a polity's universe fails to reflect the potential wealth of truth of that particular social universe. The multi-verse of the lived-worlds of the others that belong to that polity are not allowed to emerge and participate in the larger world of social discourse, and therefore a whole realm of a society's meaning is left out of the discourse defining its coming to presence. Thus, any real unity and wholeness is not arrived at, for the marginalized are not given a chance to articulate the wisdom of their lived-world in the formal articulations that define the governance of the greater political, economic, and social universe to which they belong.

If a society has taken on the form of formal governance where sections of society are marginalized in the discourse defining its coming to presence, then mechanisms must be established to guarantee the participation of the marginalized sectors of society in the discourse process. This is perhaps what Habermas refers to as the ideal situation where "all affected can in principle freely participate as equals in a cooperative search for the truth" (Habermas 1993, 49–50).

In reality of course, the powers that define these processes are resistant to the creation of such mechanisms, for often a working, formal government and economic system that defines a universe beneficial to those defining the discourse of society is already installed. To allow the multi-verse of discourse to redefine the already defined universe of meaning that they have established is tantamount to a disruption of that already existing and functioning societal order.

However, such a disruption of the existing universe may be necessary, for that universe may not reflect the potential fullness of the coming to being of that society or polity. In fact, there is often no one real order established by this universe defined by an elite group. In such a polity, its marginalized will often exist as the colonized enlisted in participating in a society that they did not define and often do not understand, and often they live their lives in a separate universe from the colonizer. In such a societal situation, much discontent could arise when the colonizing universe encroaches on their life-worlds, and formal governmental processes are hampered by the lack of meaningful participation of the marginalized in the formal processes defining the shared universe.

Therefore, the institution of mechanisms of democratic participation, where the right of the marginalized to participate in the discourse defining society is restored and guaranteed, becomes imperative.

In the Philippines, civil society advocates composed of non-governmental organizations and people's organizations have consistently lob-

bied for people's participation in governance since the restoration of formal democratic structures in the 1980's. This they worked for through lobbying efforts to institute democratic institutions in Philippine governance. After the EDSA Revolution of 1986, when the dictator Ferdinand Marcos was ousted from power by a bloodless uprising, the traditional elite recognized the role that civil society advocates played in preserving institutions that ensure the continued existence of democratic structures.

Thus, the framers of the 1987 Constitution enshrined systems of civil society participation in governance to make it difficult for the rise of any dictatorship in the Philippines. These systems are also meant to ensure that the least powerful and influential sectors of society have a voice in the discourse of society. Thus the party-list system, the autonomous and democratic local government system, and the local sectoral system of representation were mandated. The Constitution left the implementation of these systems to legislation in Congress. To date, only the party-list system and the local autonomy provisions have been legislated.

The Local Government Code of 1991

With the 1986 Constitution, a change of framework for local governance was instituted. Article X, Section 2 states that "The territorial and political subdivisions shall enjoy local autonomy." And with this statement, local governance was given a completely new character. Although the Constitution preserved the centrist form of government, it understood that LGUs should be granted local autonomy for the sake of effective governance. The Constitution sought to create LGUs that could dynamically meet the governance needs of their respective territories. This meant that resources as well as the authority and power to effectively govern the localities had to be divested to the LGUs.

At the heart of the establishment of local autonomy is the empowerment of LGUs in order for them to serve as effective units of administration. LGUs were given powers for revenue generation, corporate powers, legislative powers, and administrative powers. In effect, they were also given more freedom to govern themselves. This does not mean that LGUs were made into absolutely self-governing territories. Under the new set-up these governmental units still fall under a unitary system of government. They were granted qualified self-government for effective administration toward genuine and comprehensive development, the effective delivery of basic services, and the safe-

guarding of the welfare of the people. Within bounds prescribed by Congress, they were given enough political power and enjoy some measure of independence in planning, legislation, budgeting, disbursement of funds and administration to effectively address the development and welfare of the localities.

Since the institution of local autonomy was meant to draw the wisdom for administration from those rooted in the lived-world of the localities, each LGU was also restructured in order to strengthen not only the administrative unit, but also to strengthen people's participation in governance. With local autonomy, not only are the LGUs meant to be effective administrative units but also venues for democratic governance. By vesting more power in the LGUs, the people are given a chance to effectively participate in the delivery of basic needs, in the planning for the development of the community, and in the administration of the locality.

The constitutional provision of Article X, Section 3 mandates that Congress legislate a "mechanism of recall, initiative, and referendum" through which the citizenry are provided with a legal process by which they may directly propose, enact or amend any ordinance or resolution. Section 14 of Article X also provides for "regional development councils or other similar bodies" with representatives from non-governmental organizations toward the acceleration of "the economic and social growth and development of the units in the region." The Constitution also provides for local sectoral representatives in the legislative bodies of municipalities, cities, and provinces.

The Code legislated these constitutional mandates in the following provisions that ensure people's participation in governance: i.e. by institutionalizing non-governmental organizations and people's organizations' participation in the local development council, the local prequalification, bids and awards committees, local school boards, local health boards, and local peace and order councils. These "local special bodies" are potentially powerful tools for people's participation in governance.

The local school boards are tasked to "determine in accordance with the criteria set by the Department of Education, Culture and Sports, the annual supplementary budgetary needs for the operation and maintenance of public schools" within their local government jurisdiction and "the supplementary cost of meeting such needs, which shall be reflected in the form of an annual school board budget corresponding to its share of proceeds" which constitutes the Special Education

Fund and other sources of revenue provided by law. They have the power to authorize the disbursement of funds from the Special Education Fund and to serve as an advisory committee to the local legislative body on education matters. The local parents-teachers associations, teachers' organizations and a representative of the non-academic personnel each have one representative to the board (The Local Government Code of 1991 or Republic Act 7160, Sec. 98, henceforth to be indicated as LGC).

Local Health Boards serve to "propose to the sanggunian [the local legislative body] concerned, in accordance with standards and criteria set by the Department of Health, annual budgetary allocations for the operation and maintenance of health facilities and services" within the jurisdiction of the local government concerned. They also serve as advisory committees to the local legislative body and create committees to advise local health agencies on matters such as personnel selection and operations review. These boards have a representative from a non-governmental organization involved in health services (LGC Sec. 102).

Local Development Councils serve to initiate a comprehensive, multi-sectoral development plan. They "shall assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its jurisdiction" (LGC Sec. 107). At least a fourth of its seats will be occupied by representatives of non-governmental organizations operating in its jurisdiction (LGC Sec. 107). They may also formulate long-term, medium term, and annual economic development plans and policies, public investment programs, prioritize development programs, formulate local investment incentives, and coordinate and evaluate development programs and projects (LGC Sec. 108).

The Local Prequalification, Bids and Awards Committee is tasked to be "responsible for the conduct of prequalification of contractors, bidding, evaluation of bids, and the recommendation of awards concerning local infrastructure projects. It shall have two representatives from non-governmental organizations" (LGC Sec. 38).

Potentially, these local special bodies are powerful. They are actually mechanisms of governance for they give direction to the community's development and actually determine the provision of basic services such as health and education. Thus, the participation in these bodies of civil society representatives is significant.

If these organizations represent the voice of the populace, especially its marginalized, then non-governmental organization and people's or-

ganization representatives give the people a voice in the discourse of these bodies. In effect, the people who traditionally had no voice regarding the delivery of services and even the direction of their communities now participate in bodies with real powers to determine what ought and ought not to be in their communities according to the wisdom of their life-worlds.

The marginalized sectors of society are also allowed to participate in the discourse of legislation because three seats of the local legislating bodies are reserved for the election of local sectoral representatives who sit for the workers, women, and another sector to be determined by the legislative body concerned. These representatives to be elected by the people will have the rights and powers of the other local legislators (LGC Sec. 446, 457, and 467). Unfortunately, the implementation of this system is to be provided for by law, and almost a decade after the passage of the Code, Congress has failed to pass such a law.

Measures that more directly involve the community in the discourse that defines the shape of their communities are the procedures for recall, initiative and referendum. Recall is the process by which registered voters can, for loss of confidence, remove the local elected officials from their posts.

This can be done by a preparatory assembly composed of the local executives and legislative body members or by 25 percent of the registered voters in the local government unit concerned (LGC Sec. 69). Local initiative is "the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance." A minimum of 1,000 petitioners for a city or province, 100 for the municipality, and 50 for a barangay are needed to begin the process of initiative (LGC Sec. 120–21).

This right can be invoked if any citizen proposal regarding a city ordinance is not acted upon by the local legislative board. For this proposal to have effectivity, a majority of the voters must approve it in an initiative vote.

Local referendum, on the other hand, "is the legal process whereby the registered voters of the local government units may approve, amend or reject an ordinance enacted by the sanggunian" (LGC Sec 126). The process for the success of referendum is similar to the process of initiative. These processes give the citizenry a chance to directly participate in the process of legislation. At the least, they bring to the realm of public discourse the need to enact or reject ordinances.

In this way, no local legislative body may feel that they may carry on the task of legislation without involving the general populace. By giving legitimacy to the participation of the citizenry in the proposing or recalling of legislation, a formal system of democratic participation of the multi-verses of reason potentially exists in the localities.

Of course, although these systems of democratic participation in governance are actually constitutionally and legislatively mandated, one can wonder about the quality of their enactment. Among national non-governmental circles, it is common knowledge that some local government executives set up dummy non-governmental organizations so that the people who fill the seats in the posts of local special bodies are people who follow their own line of thinking. Terence George makes this observation about the process of NGO participation in local special bodies:

After accreditation, local DILG [Department of Interior and Local Government] officials in each jurisdiction were to call all accredited NGOs, POs, and other private groups to a meeting where they would select among themselves the representatives to each of the local special bodies. In some areas mayors and governors took over the meetings and tried to assign NGOs and POs to each special body, often meeting strong resistance from the NGO community. In others, all those accredited were given positions through of process of self-selection by NGOs and POs. Many jurisdictions did not have enough NGOs or POs to make up one-fourth of the membership of the local development councils. Tensions arose in some places as POs were edged out of leadership positions by middle-class professionals in NGOs. (1998, 229)

Former Governor Robert Pagdanganan (2000) of Bulacan, a governor known for encouraging people's participation in the development programs of his province, in an interview agrees that in most municipalities, hardly any non-governmental organizations exist to fill the seats allocated them in the boards. Thus some local executives have had to encourage the formation of these organizations and, because of their encouragement, are accused of setting up front organizations. And if NGO members do sit in local boards and councils, they lack the skill or clout to actually affect decisions in these boards (George 1998, 229).

The mechanisms of initiative and referendum have not been successfully utilized. As of early 1995 no citizen initiatives have been passed into law (*ibid.*). In fact, lawyer groups concerned with local governance are still talking of finding cases to test the mechanism of initiative and referendum. Recall cases, on the other hand, are mostly

initiated by political rivals of incumbents. Terrence George notes that "Although eleven recall efforts have been filed with the Commission on Elections, only one has been completed (recalling the Governor of Bataan), and that successful effort resulted from political rivalry than a widespread popular outcry for change" (ibid.).

We can wonder about the effectiveness of these legislated systems of people's participation in discourse considering that the people come from different realms of discourse with different rules of discourse. Having witnessed barangay consultations in various grassroots communities, I have observed how methods of consultation are often carried out by the leaders as if they were patriarchs asking ignorant children what they want.

The tone of the Mayor's or Congressmen's consultations of barangay captains can take the same tone. Sometimes, local executives who belong to the local elite discourse with grassroots leaders with amusement and sometimes with impatience because they speak differently from the *real politik* discourse of the politically adept elite leadership.

I believe many local executives still do not see the need to discourse with the people of the grassroots. In fact it is the local political elite who have consistently blocked the passage of the local sectoral representation law. Their consultations are mere political exercises to find out what their constituents want and to keep the illusion of democratic consultation in governance alive. But a substantial discussion that allows for the interaction of multi-verses toward a formation of a collective reality does not often occur between the leadership of the localities and the people. Often, discussions go only as deep as the people speaking their minds and the politicians assuring them that they have been heard.

After this exercise, the world runs according to the same rationality defined by the dominant world-view with some accommodations made to the concerns of the people. This is because legislation can only really mandate people's participation in the structures of societal discourse, but it still insists that the discourse occur in the language and method of discourse of the dominant universe. We can see this in the party-list system of representation.

The Party-List System of Representation

The party-list system was instituted to ensure that the marginalized have 20 percent of seats in Congress. In this way, there is at least token direct representation for those who are often left out of the direct discourse of national legislation. The party-list system gave the parlia-

mentarians of the street a place in Congress and a chance to directly take part in legislative work.

Enshrined in Section 5 of Article VI of the 1987 Constitution, and given form in the party-list law R.A. 7941 of 1995, representatives of the under-represented were given the chance to run for seats in Congress by competing for fifty-two seats reserved for them. These seats are to be allocated proportionally among those groups or parties that gained 2 percent of the party-list vote, with a cap of three seats per party. Allowed to participate in this election were the following:

registered national, regional, and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole. (R.A. 7941, Sec. 2)

Each group should nominate five candidates who will occupy the party-list seats. A maximum of three seats will be proportionally allocated to each party.

The first party-list elections were held in May 1998. On one hand, one can say that the elections, given the novelty of the system, were a success (see Rodriguez and Velasco 1998). Thirteen representatives of twelve party-list organizations are now members of Congress, and most are actively taking on their duties as legislators. Ten of thirteen party-list legislators are actively filing bills and resolutions that champion the causes of their constituencies (Martinez 1999, 63–64).

On the other hand, thirty-nine seats of those reserved for the party-list system of elections still remain unoccupied, only 33.5 percent of the registered voters actually participated in the party-list elections, and, perhaps the biggest failure in the past elections, most of the participating parties of the party-list failed to rally their civil society constituents to gain the minimum 2 percent of the total party-list vote to qualify for seats in Congress. Labor, which can boast of a large constituency, failed to gain even one seat. The peasant groups won only four seats and the urban poor two.

Surely, the nationwide, organic constituency of these groups number more than a million each sector, yet they were only able to seat so few of their representatives. Each group needed only 180,000 votes to qualify for a seat in these last elections. Perhaps this failure of the sectoral groups can be attributed to a lack of unity in this sector. The fact remains that civil society failed to take advantage of the opportu-

nity that the party-list system offered. Clearly, civil society groups were ill prepared to conduct a nation-wide campaign that seems to be the clear demand for success in the party-list system. After all, they had to garner 2 percent of the national party-list vote. Also, they had to work against the incompetence of the Commission on Elections (COMELEC) which failed to conduct an education/information campaign even for its own board of canvass officers. Their education campaign began at most a month before elections which is absurd for such a novel and relatively complex system of elections. Thus many votes were lost to indifference and confusion.

However, we must consider the fact that there are problems inherent to the enabling law. First and foremost is its lack of a clear formula for the proportional system of allocation of seats. For a proportional system of representation, this is most essential. The law states that the allocation of seats be made this way:

Section 11 (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each; *Provided*, that those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: *Provided, finally*, that each party, organization, or coalition be entitled to not more than three (3) seats.

The COMELEC was at a loss as to how to fill the reserved seats. In their simplistic allocation formula, one seat was allocated to each qualifying group for every two percent of the vote they garnered. Therefore, only thirteen clearly qualified for seats. The second division of the COMELEC went so far as to try to fill the remaining thirty-nine seats by a system of plurality that ignored the 2 percent qualifying minimum share of the vote that R.A. 7941 set. In their lack of understanding of what a proportional allocation of seats means, and due to the lack of a clear proportional allocation formula in the law, COMELEC failed to come up with a reasonable allocation of seats for qualifying party-list groups.

One other issue regarding the law has to do with the 2 percent of the total party-list vote that each party has to garner to qualify for a party-list seat. Many sectoral groups contend that 2 percent is just too high for groups of the marginalized to garner given that they are handicapped by a lack of resources to wage a nationwide campaign. Therefore, a two percent floor for one seat as set by Congress is actually prohibitive for the marginalized groups for whom the party-list system was established.

In the deliberations for the party-list law revision, however, members of the House Committee on Suffrage and Electoral Reform, including party-list representative and primary sponsor Loretta Rosales, argue that 2 percent is a minimum that ensures that party-list groups represented in Congress have a substantial constituency.

The other problem is the law's inability to ensure that only groups genuinely representing the marginalized are accredited for participation in the party-list elections. For instance, in the 1998 elections, and only in the 1998 elections, the "first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress" are not entitled to participate in the party-list elections (R.A. 7941, Sec. 11). But because of this ban, there was talk of some of these parties creating satellite parties to run for the party-list. And in the next elections, when the ban is lifted, it is possible for the major political parties to subvert the party-list system by dominating the party-list seats.

Although a cap of three seats per party is set by the law (R.A. 7941, Sec. 11), if the major political parties realize that the 20 percent reserved seats for the party-list is a substantial political block in the House, then they run in the next elections and get around the three-seat ban to dominate the party-list seats by forming satellite parties when the ban against them expires. In order to correct the problems of the party-list law, Rep. Rosales filed a House Bill proposing a clear proportional allocation formula, a permanent ban on the participation of the top five political parties, a clearer definition of the party-list groups as representatives of the under-represented, and pushing the cap of three seats to eight representatives per party. This bill was approved in principle at the house committee level.

Right after the election results were promulgated, civil society groups concerned with electoral reform gathered to discuss their proposals regarding their own amendments to the law. In the meetings of the "Kumare-Kumpare" network for electoral reform, the primary concerns that emerged revolved around the idea of instituting a clear proportional allocation system, the lowering of the 2 percent quota, ensuring that all twelve marginalized sectors enumerated in R.A. 7941 (Sec. 5: "the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals") be represented, and imposing a permanent ban on big parties so that only the truly under-represented are allowed to participate in Congress.

These groups have already given their support to Rep. Rosales' bill, but it is interesting to note their concerns. From the Kumare-Kumpare proposals, we see a desire on the part of civil society advocates to ensure the representation of the people especially by sectoral groups. But if one studies the results of the party-list elections, one can see that if the marginalized desire to gain seats in the House of Representatives, they must work to gather their network of civil society proponents into an electoral mechanism. For the votes are out there. After all, these civil society groups effectively serve a great majority of the poor and marginalized. They can gather the votes only if they can form alliances with each other and present a united force that can mobilize their networks.

In the election results of these first elections, we clearly see that the sectors as a whole can garner substantial votes. The peasant sector in toto earned more than a million votes, labor more than half a million, and the urban poor garnered 900,000. These votes they were able to gather when they were ill-prepared to wage a national campaign and the general public was unaware of the party-list.

The next elections, hopefully working under an amended system, can expect to gather more votes from a more enlightened citizenry. This could work for or against the party-list groups running for seats in Congress. It could work for them because they can gather and campaign more effectively knowing that the public is more aware of the importance of the party-list. But it could work against them because more voters voting in the party-list means that the next 2 percent target will be more than 180,000. Also, party-list groups may be up against the major political parties who did not focus much effort in the party-list since they were not aware of its value in the 1998 elections, but may be planning to field party-list candidates now that the ban on them has been lifted.

The party-list experience shows us that we can legislate systems of democratic participation in legislative discourse, and this is important. The fact that the systems for participation exist institutes the possibility of such participation. But the fact that the systems exist does not ensure participation. The amendments to the party-list law, for instance, attempt to ensure that only the marginalized participate in the party-list system. By attempting to ban the major political parties and giving definitions for the under-represented and marginalized, they hope to guarantee that only the under-represented will fill the party-list seats.

However, only the genuine participation of the under-represented in the established systems will guarantee the success of this system.

The Akbayan! Citizen's Action Party is an excellent example of the depth of participation possible for the party-list. In Congress, Rep. Rosales represents this multi-sectoral political party. As a representative of the party, Rep. Rosales works to represent the concerns of its constituency in the House. The party is composed of a broad spectrum of progressive political blocs, non-governmental organizations and people's organizations, each bearing concerns that range from human rights, electoral reforms, agrarian reform and good governance.

Typically, all the party decisions are made by a core group based in Manila. This group represents the major players from each bloc and sectoral concern. A mechanism for consultation has also been set in place so that its constituency, composed mainly of NGOs and POs and their constituency, can air their concerns and views on issues that affect the party, their communities, and sectors.

Akbayan!'s consultative mechanism is quite impressive. Having come from a political and development framework that respects consultative and participatory methods of organizing, there is a clear party policy of consultation and dialogue. But again, the whole process of discourse happens in a realm of discourse dictated by the existing political universe that is Manila-based. Other regional and community based NGOs affect the national discourse, but they discuss their issues in a format set by the NGO community and this is translated to the political universe of the legislative work of Congress. Thus, the people's multi-verse directly articulated from their rationality barely makes an impact on the national discourse.

The party-list party, which is somewhat competent in the national discourse, serves as a translator that brings the concerns of the people to the national discourse by transforming the saying of that lifeworld discourse to the formal structures of national politics. In a sense, what is being said in the lifeworlds of the people is usurped in the comprehension of the capital's language and system of discourse. This way, the people's multi-verses are translated into the dominant universe and have a way to significantly shape the discourse that defines the national reality. We can therefore legislate a system of people's representation in the system of national discourse, but in effect we are legislating them into the dominant universe and its systems, rather than opening the dominant universe growth through its opening to other realms of discourse.

We can illustrate the limits to legislating democracy in the case of the lobby for the formulation of an implementing law for the local sectoral representation system.

The Lobby for Local Sectoral Representation

In the spirit of democratization and people's participation in local legislative discourse, the system of local sectoral representation was mandated by the 1987 Constitution (Section 6 Article X) and legislated by the local government Code of 1991. In all the lawmaking bodies of the local government units, from the provincial to the municipal and city levels, representatives of the basic, often marginalized, sectors of society have been added to the composition of the Sanggunians. Thus three seats are reserved for sectoral representatives in the Sangguniang Bayan, Sanggunian Panlalawigan and Sangguniang Panlungsod. These seats will be filled by representatives from labor, the women and another sector (either from the urban poor, indigenous cultural communities, disabled persons, or any other sector) determined by the sanggunian. The campaign for the passage of an enabling law has been a major campaign for electoral reform organizations since the tenth Congress, but they have had little success to date.

In the 11th Congress, the filed bills for an enabling law had already reached the technical working group level where the House Committees on Suffrage and Electoral Reform and People's Participation with non-governmental organizations formulated a consolidated bill. The major points submitted to the technical working group by the Local Governance Policy Forum, a network of organizations focusing their studies on local government issues, were the following: that the law specify that the sectoral group and not the individual sits for the sector; that the voters vote for the sectoral group as representative and not the individual candidate; that groups occupying the sectoral seats belong to the sector they represent; and that groups composed of at least twenty-five members will be allowed to run. These points were meant to ensure that the local sectoral representation system, as a democratizing system, will not be subverted in its implementation. By calling for a system of group representation, the LGPF tried to lead the local electoral system away from a politics of personalities. By including in the qualification for candidacy the need for the representative and the group to belong to the sector represented and that they be composed of at least twenty-five members, they try to ensure that

smaller groups who have a constituency but have no established political base can represent the marginalized in the local legislative body.

The bills filed in the 11th Congress, namely House Bills No. 307, 1122 and Senate Bill 807, contain similar provisions except for the specification that the voters vote for the group, and not for the individual nominee of the group. The passage of an enabling law is still an uphill battle because of the staunch opposition of the local government officials who are a strong lobby group in Congress. Already, the advocates for the passage of the Local Sectoral Representation Law failed in the 11th Congress. However they are still pushing for its passage in the 12th Congress. But even if the local sectoral representation law is passed, the question remains: will the people take part in this system?

If the party-list elections are any kind of indication of people's participation in the electoral process leading to representation in legislation, we can project that most of the participants in these elections will be civil society players who belong to the non-governmental organization community. A profile of party-list representatives of major organizations that were able to win seats in Congress is a profile of leaders from the academe, the community development world, the women's rights movement, the business community, the peasant organizing movement, and the labor movement. They belong to the organized groups who have fought for the rights of the basic sectors but a few, if any, are organic members of their sectors. Most are lawyers, teachers and accountants (Martinez 1999, 63–64).

This is understandable, because the national leadership of the non-governmental organizations belongs to a class educated in the ways of the rationality of the dominant social universe. They have traditionally served as a bridge between the marginalized and the leaders of the dominant social system. Through their intervention, the people's concerns have reached the attention and comprehension of the government, business, media, and funding agencies. In a very real way, they serve to articulate the concerns of the marginalized multi-verses in the rationality of the dominant universe.

Indeed, there is a growing number of people's organization leaders who are effectively taking part in the discourse of the dominant rationality. For instance, people's leaders are taking part in public hearings conducted on local concerns regarding fisherfolk rights, agrarian reform issues, land and water use issues, and other such sectoral concerns. They are being heard because they are learning to deal with politicians on the level of dominant universe politics, but on the whole

it is still those non-governmental organization advocates who have to mediate between the people and the institutions of the dominant universe's leadership.

We must therefore wonder about how effective the local sectoral representation system will be in drawing leaders from the alternative multi-verses who will discourse according to the methods of discourse of their multi-verses. We should also wonder how effective these leaders will be in winning votes in the existing electoral system that conforms to the ways of the dominant universe and in participating in the discourse of legislation in the localities which work in the formal discourse of the dominant rationality. If the performance of local special bodies is any indication, the lack of skill and clout in the forms of knowledge and discourse of the dominant universe will render their participation nominal or ineffective.

Conclusion

Analyzing all these efforts to formulate legislation that establishes democratic structures, it is clear that these legislated structures of democratic participation still fall within the legal/rational framework of the dominant universe. The Local Government Code institutes special bodies for deliberation; the party-list law institutes a system of people's participation in national legislation work, and the local sectoral representation, once enacted, will allow for the people to participate in local legislative bodies.

These are great leaps forward in legislating participatory democracy, but all these systems still belong to the formal systems of the dominant universe from which the under-represented are marginalized. These reforms work to address the problem of marginalization within the system of rationality from which the marginalized are excluded. Mainly this is because the system was formulated without their equal participation in the discourse formulating the formal systems that give shape to the workings of their nation.

Thus these reforms can only go so far as to give the marginalized a door for marginal participation in the dominant universe. It will allow the participation of their leaders who have learned its language. But the reforms still maintain the framework of governance that was formulated without the people's multi-verses being able to determine the shape of the discourse. In order for a true discourse situation to exist, the participants in the discourse must be able to affect not only the discourse but also the rules of discourse itself (Habermas 1993, 60).

For a free and fair discourse defining, collective reality demands that all the participants have also taken part in the formation of the structures of engagement. Otherwise, only those who are adept at the system of discourse will be able to influence and contribute to it effectively.

The question for all advocates for democracy is this: can a deeper reform be accomplished where the system of discourse that defines the dominant universe be one that is born from a true discourse of the multi-verses of rationality and the wisdom of life worlds? Perhaps a time will come when the dominant universe will be one born from a true discourse of the multi-verse of life-worlds.

However, if this day should come, it will call for the emergence of an ideal discourse situation where even the most minority group is allowed to shape the discourse situation and the coming to presence of the collective existence. The emergence of this discourse society will of course be a long time coming. The process could be initiated with the empowerment of the people. It will demand that we do not usurp their discourse in our discourse universe. We must encourage the expression of the wisdom of their lived-experience and the articulation of their own universes in their own modes of discourse. If any legislation for such a discourse situation will emerge, it must aim at reforming the system so that it opens to discourse and is open to the discourse of the marginalized as genuine expressions of a wisdom that understands the coming to presence of our common world.

References

- George, Terrence R. 1998. Local governance: People power in the provinces. In *Organizing for democracy: NGOs, civil society, and the Philippine state*, eds. G. Sidney Silliman and Lela Garner Noble. Quezon City: Ateneo de Manila University Press.
- Habermas, Jurgen. 1993. Remarks on discourse ethics. *Justification and application: Remarks on discourse ethics*. Translated by Cianan P. Cronin. Cambridge, Mass.: The MIT Press.
- Martinez, Manuel Lito L., Jr. 1999. A look at the first year performance of the Party-List representatives. *The Party List Watch* 1, no. 3 (June-September): b3-b4.
- Ortega y Gasset, Jose. 1960. *What is philosophy*. New York: W. W. Norton and Company.
- Pagdanganan, Robert. 2000. Interview by author. Quezon City, 12 January.
- Rodriguez, Agustin and Djorina Velasco. 1998. *Democracy rising? The trials and triumphs of the 1998 Party-List elections*. Quezon City: Institute of Politics and Governance.
- Scheler, Max. 1960. *On the eternal in man*. Translated by Bernard Noble. London: Student Christian Movement Press.