

JOSE O. VERA, ET AL., PETITIONIERS, VS. JOSE A. AVELINO, ET AL., RESPONDENTS.*G. R. No. L-543. August 31, 1946*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/60dbeeda2b55/>

Pursuant to a constitutional provision, (section 4, Article X), the Commission on Elections submitted, last May, to the President and the Congress of the Philippines, its report on the national elections held the preceding month, and, among other things, stated that, by reason of certain specified acts of terrorism and violence in the Provinces of Pampanga, Nueva Ecija, Bulacan and Tarlac, the voting in said region did not reflect the true and free expression of the popular will.

When the Senate convened on May 25, 1946, it proceeded with the selection of its officers. Thereafter, in the course of the session, a resolution was approved referring to the report and ordering that, pending the termination of the protest lodged against their election, the herein petitioners, Jose O. Vera, Ramon Diokno and Jose E. Romero—who had been included among the sixteen candidates for senator receiving the highest number of votes, proclaimed by the Commission on Elections—shall not be sworn, nor seated, as members of that chamber.

Pertinent parts of the resolution—called Pendatun—are these:

"WHEREAS the Commission on Elections, charged under the Constitution with the duty of insuring free, orderly, and honest elections in the Philippines, reported to the President of the Philippines on May 23, 1946, that

" * * * Reports also reached this Commission to the effect that in the Provinces of Bulacan, Pampanga, Tarlac and Nueva Ecija, the secrecy of the ballot was actually violated; that armed bands saw to it that their candidates were voted for; and that the great majority of the voters, thus coerced or intimidated, suffered from a paralysis of judgment in the matter of exercising the right of suffrage; considering all those acts of terrorism, violence and intimidation in connection with elections which are more or less general in the provinces of Pampanga, Tarlac, Bulacan and Nueva Ecija, this Commission believes that the election in the provinces aforesaid did not reflect the true and free expression of the popular will. It should be stated, however, that the Commission is without jurisdiction, to determine whether or not the votes cast in the said provinces which, according to these reports have been cast under the influence of threats or violence, are valid or invalid, * *

* * *

"WHEREAS, the minority report of the Hon. Vicente de Vera, member of the Commission on Elections, says among other things, that 'we know that as a result of this chaotic condition, many residents of the four provinces have voluntarily banished themselves from their home towns in order not to be subjected to the prevailing oppression and to avoid being victimized or losing their lives'; and that after the election dead bodies had been found with notes attached to their necks, reading, 'Bomoto kami kay Roxas' (we voted for Roxas);

"WHEREAS the same Judge De Vera say in his minority report that in the four provinces of Pampanga, Tarlac, Bulacan, and Nueva Ecija, the worst terrorism reigned during and after the election, and that if the elections held in the aforesaid provinces were annulled as demanded by the circumstances mentioned in the report of the Commission, Jose O. Vera, Ramon Diokno, and Jose Romero, would not and could not have been declared elected:

* * * * *

"WHEREAS the terrorism resorted to by the lawless elements in the four provinces mentioned above in order to insure the election of the candidates of the Conservative wing of the Nationalist Party is of public knowledge and that such terrorism continues to this day; that before the elections Jose O. Vera himself declared as campaign Manager of the Osmeña faction that he was sorry if Presidential Candidate Manuel A. Roxas could not campaign in Huk provinces because his life would be endangered; and that because of the constant murders of his candidates and leaders, Presidential Candidate Roxas found it necessary to appeal to American High Commissioner Paul V. McNutt for protection, which appeal American High Commissioner personally referred to President Sergio Osmeña for appropriate action, and the President in turn ordered the Secretary of the Interior to afford the necessary protection, thus impliedly admitting the existence and reign of such terrorism;

"WHEREAS the Philippines, a Republic State, embracing the principles of democracy, must condemn all acts that seek to defeat the popular will;

"WHEREAS it is essential, in order to maintain alive the respect for democratic institutions among our people, that no man or group of men be permitted to profit from the results of an election held under coercion, in violation of law, and contrary to the principle of freedom of choice which should underlie all elections under the Constitution;

"WHEREAS protests against the election of Jose O. Vera, Ramon Diokno, and Jose Romero, have been filed with the Electoral Tribunal of the Senate of the Philippines on the basis of the findings of the Commission on Elections above-quoted;

"NOW, THEREFORE, be it resolved by the Senate of the Philippines in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of Jose O. Vera, Ramon Diokno, and Jose Romero, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitutes the ground of said protests and will therefore be the subject of investigation and determination."

Petitioners immediately instituted this action against their colleagues responsible for the resolution. They pray for an order annulling it, and compelling respondents to permit them to occupy their seats, and to exercise their senatorial prerogatives.

In their pleadings, respondents traverse the jurisdiction of this Court, and assert the validity of the Pendatun Resolution.

The issues, few and clear-cut, were thoroughly discussed at the extended oral argument and in comprehensive memoranda submitted by both sides.

A.—NO JURISDICTION.

Way back in 1924, Senator Jose Alejandrino assaulted a fellow-member in the Philippine Senate. That body, after investigation, adopted a resolution, suspending him from office for one year. He applied here for mandamus and injunction to nullify the suspension and to require his colleagues to reinstate him. This Court believed the suspension was legally wrong, because, as senator appointed by the Governor-General, he could not be disciplined by the Philippine Senate; but it denied the prayer for relief, mainly upon the theory of the separation of the three powers, Executive, Legislative and Judicial. (*Alejandrino vs. Quezon*, et al. 46 Phil. 83.) Said the decision:

" * * * Mandamus will not lie against the legislative body, its members, or its officers, to compel the

performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power. So it has been held that where a member has been expelled by the legislative body, the courts have no power, irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement. (Code of Civil Procedure, section 222, 515; 18 R. C. L., 186, 187; Cooley, Constitutional Limitations, 190; French vs. Senate [1905], 146 Cal., 604; Hiss vs. Bartlett [1855], 69 Mass., 468; Ex parte Exhols [1886], 39 Ala., 698; State vs. Bolte [1889], 151 Mo., 362; De Digo vs. House of Delegates [1904], 5 Porto Rico, 235; Greenwood Cemetery Land Co. vs. Routt [1892], 17 Colo., 156; State ex rel. Cranmer vs. Thorson [1896], 33 L. R. A. 582; People ex rel. Billings vs. Bissell [1857], 19 Ill., 229; People ex rel. Bruce vs. Dunne [1913], 258 Ill., 441; People ex rel. La Chicote vs. Best [1907], 187 N. Y., 1; Abueva vs. Wood [1924], 45 Phil., 612.)" (Supra, pp. 88-89.)

" * * * Under our form of government the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the constitution." (Supra p. 93)

"No court has ever held and we apprehend no court will ever hold that it possesses the power to direct the Chief Executive or the Legislature or a branch thereof to take any particular action. If a court should ever be so rash as to thus trench on the domain of either of the other departments, it will be the end of popular government as we know it in democracies." (Supra, p. 94)

"Conceding therefore that the power of the Senate to punish its members for disorderly behavior does not authorize it to suspend an appointive member from the exercise of his office for one year, conceding what has been so well stated by the learned counsel for the petitioner, conceding all this and more, yet the writ prayed for cannot issue, for the all-conclusive reason that the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action, * * *" (Supra, p. 97)

The same hands-off policy had been previously followed in *Severino vs. Governor-General and Provincial Board of Occidental Negros* (16 Phil. 366) and *Abueva vs. Wood* (45 Phil. 612.)

At this point we could pretend to erudition by tracing the origin, development and various applications of the theory of separation of powers, transcribing herein whole paragraphs from adjudicated cases to swell the pages of judicial output. Yet the temptation must be resisted, and the parties spared a stiff dose of jurisprudential lore about a principle, which, after all, is the first fundamental imparted to every student of Constitutional Law.

Not that a passable excuse would be lacking for such a dissertation. The advent of the Republic, and the consequent finality of our views on constitutional issues, may call for a definition of concepts and attitudes. But surely, there will be time enough, as cases come up for adjudication.

Returning to the instant litigation, it presents no more than the questions, whether the *Alejandrino* doctrine still obtains, and whether the admitted facts disclose any features justifying departure therefrom.

When the Commonwealth Constitution was approved in 1935, the existence of three coordinate, co-equal and co-important branches of the government was ratified and confirmed. That Organic Act contained some innovations which established additional exceptions to the well-known separation of powers; for instance, the creation of the Electoral Tribunal wherein Justices of the Supreme Court participate in the decision of congressional election protests, the grant of rule-making power to the Supreme Court, etc.; but in the main, the independence of one power from the other was maintained. And the Convention—composed mostly of lawyers, (143 out of a total of 202 members) fully acquainted with the *Abueva*, *Alejandrino* and *Severino* precedents—did not choose to modify their constitutional doctrine, even as it altered some fundamental tenets theretofore well established. [1]

However, it is alleged that, in 1936, *Angara vs. Electoral Commission*, (63 Phil. 139) modified the aforesaid ruling. We do not agree. There is no pronouncement in the latter decision, making specific reference to the *Alejandrino* incident regarding our power—or lack of it—to interfere with the functions of the Senate. And three years later, in 1939, the same Mr. Justice Laurel, who had penned it, cited *Alejandrino vs. Quezon* as a binding authority on the separation of powers. (*Planas vs. Gil*, 67 Phil. 62.) It must be stressed that, in the *Angara* controversy, no legislative body or person was, a litigant before the court, and whatever obiter dicta, or general expressions, may therein be found can not change the ultimate circumstance that no directive was issued against a branch of the Legislature or any member thereof. [2] This Court, in that case, did not require the National Assembly or any assemblyman to do any particular act. It only found "has jurisdiction over the Electoral Commission." (*Supra*, 63 Phil., 161.)

That this Court in the *Angara* litigation made declarations, nullifying a resolution of the National Assembly, is not decisive. In proper cases this Court may annul any Legislative enactment that fails to observe the constitutional limitations. That is a power conceded to the judiciary since Chief Justice Marshall penned *Marbury vs. Madison* in 1803. Its foundation is explained by Mr. Justice Sutherland in the *Minimum Wage Case*, (261 U. S., 544). Said the Court:

" * * * The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority, and if it conflicts with the Constitution, must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power, that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect, and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."

And the power is now expressly recognized by our Organic Act. (See section 2 and 10, Art. VIII.)

But we must emphasize, the power is to be exercised in proper cases, with the appropriate parties.

"It must be conceded that the acts of the Chief Executive performed within the limits of his jurisdiction are his official acts and courts will neither direct nor restrain executive action in such cases. The rule is non-interference. But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts when these are properly challenged in an appropriate legal proceeding. * * * In the present case, the President is not a party to the proceeding. He is neither compelled nor restrained to act in a particular way. * * * This Court, therefore, has jurisdiction over the instant proceedings and will accordingly proceed to determine the merits of the present controversy." (*Planas vs. Gil*, 37 Phil. 62, 73, 74, 76.) (Italics ours.) (See also *Lopez vs. De los Heyes*, (55 Phil. 170.)

More about the *Angara* precedent: The defendant there was only the Electoral Commission which was "not a separate department of the government", (Vol. 63, p. 160), and exercised powers "judicial in nature". (*Supra*, p. 184.) Hence, against our authority, there was no objection based on the independence and separation of the three co-equal departments of government. Besides, this court said no more than that, there being a conflict of Jurisdiction between two constitutional bodies, it could not decline to take cognizance of the controversy to determine the "character, scope and extent" of their respective constitutional spheres of action. Here, there is actually no antagonism between the Electoral Tribunal of the Senate and the Senate itself, for it is not suggested that the former has adopted a rule contradicting the *Pendatun* Resolution. Consequently, there is no occasion for

our intervention. Such conflict of jurisdiction, plus the participation of the Senate Electoral Tribunal are essential ingredients to make the facts, of this case fit the mold of the Angara doctrine.

Now, under the principles enunciated in the *Alejandrino* case, may this petition be entertained? The answer must naturally be in the negative. Granting that the postponement of the administration of the oath amounts to suspension of the petitioners from their office, and conceding arguendo that such suspension is beyond the power of the respondents, who in effect are and acted as the Philippine Senate, (*Alejandrino vs. Quezon*, 46 Phil., 83, 88), this petition should be denied. As was explained in the *Alejandrino* case, we could not order one branch, of the Legislature to reinstate a member thereof. To do so would be to establish judicial predominance, and to upset the classic pattern of checks and balances wisely woven into our institutional setup.

Adherence to established principle should generally be our guiding criterion, if we are to escape the criticism voiced once by Lord Bryce in American Commonwealth thus:

“The Supreme Court has changed its color i. e., its temper and tendencies, from time to time according to the political proclivities of the men who composed it * * *. Their action flowed naturally from the habits of thought they had formed before their accession to the bench and from the sympathy they could not but feel for the doctrine on whose behalf they had contended.” (The Annals of the American Academy of Political and Social Science, May, 1936, p, 50.)

Needless to add, any order we may issue in this case should, according to the rules, be enforceable by contempt proceedings. If the respondents should disobey our order, can we punish them for contempt? If we do, are we not thereby destroying the independence, and the equal importance to which legislative bodies are entitled under the Constitution?

Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those involving political questions. Numerous decisions are quoted and summarized under this heading in 16 *Corpus Juris Secundum*, section 145.

Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political or social ills. We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a jealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrong-doing, each may be brought to account, either by impeachment trial or by the ballot box.

The extreme case has been described wherein a legislative chamber, without any reason whatsoever, decrees by resolution the incarceration, for years, of a citizen. And the rhetorical question is confidently formulated. Will this man be denied relief by the courts?

Of course not: He may successfully apply for habeas corpus, alleging the nullity of the resolution and claiming for release. But then, the defendant shall be the officer or person, holding him in custody, and the question therein will be the validity or invalidity of resolution. That was done in *Lopez vs. De los Reyes*, supra. (See also *Kilbourn vs. Thompson*, 103 U. S. 168; 26 Law. ed., 377,p. 391) Courts will interfere, because the question is not a political one, the "liberty of citizen" being involved, (*Kilbourn vs. Thompson*, supra) and the act will be clearly beyond the bounds of the legislative power, amounting to usurpation of the privileges of the Courts, the usurpation being clear, palpable and oppressive and the infringement of the Constitution truly real. (See 16 C. J. S. p. 44.)

Nevertheless, suppose for the moment that we have jurisdiction:

B.—PROHIBITION DOES NOT LIE.

Petitioners pray for a writ of prohibition. Under the law, prohibition refers only to proceedings of any tribunal, corporation, board, or person, exercising functions judicial or ministerial. (Rule 67, section 2, Rules of Court.) As the respondents do not exercise such kind of functions, theirs being legislative, it is clear the dispute falls beyond the scope of such special remedy.

C.—SENATE HAS NOT EXCEEDED POWERS.

Again let us suppose the question lies within the limits of prohibition and of our jurisdiction.

Before the organization of the Commonwealth and the promulgation of the Constitution, each House of the Philippine Legislature exercised the power to defer oath-taking of any member against whom a protest had been lodged, whenever in its discretion such suspension was necessary, before the final decision of the contest. The cases of Senator Fuentebella and Representative Rafols are known instances of such suspension. The discussions in the Constitutional Convention showed that Instead of transferring to the Electoral Commission all the powers of the House or Senate as "the sole judge of the election, returns, and qualifications of the members of the National Assembly", it was given only jurisdiction over "all contests" relating to the election, etc. (Aruego, *The Framing of the Philippine Constitution*, Vol. I, p. 271.) The proceedings in the Constitutional Convention on this subject are illuminating:

"It became gradually apparent in the course of the debates that the Convention was evenly divided on the proposition of creating the Electoral Commission with the membership and powers set forth in the draft. It was growing evident, too, that the opposition to the Electoral Commission was due to the rather inclusive power of that body to be the judge not only of cases contesting the election of the members of the National Assembly, but also of their elections, returns, and qualifications.

"Many of the delegates wanted to be definitely informed of the scope of the powers of the Electoral Commission as defined in the first draft before determining their final decision; for if the draft meant to confer upon the Electoral Commission the inclusive power to pass upon the elections, returns, and qualifications-contested or not-of the members of the National Assembly, they were more inclined to vote against the Electoral Commission. In an attempt to seek this clarification, the following interpellations took place:

* * * * *

"Delegate Labrador.—Does not the gentleman from Capiz believe that unless this power is granted to the assembly, the assembly on its own motion does not have the right to contest the election and qualification of its members?

"Delegate Roxas.—I have no doubt that the gentleman is right. If this draft is retained, as it is, even if two-thirds of the assembly believe that a member has not the qualifications provided by law, they cannot remove him from that reason.

* * * * *

"In the course of the heated debates, with the growing restlessness on the part of the Convention, President Recto suspended the session in order to find out if it was possible to arrive at a compromise plan to meet the objection. "When the session was resumed, a compromise plan was submitted in the form of an amendment presented by Delegates Francisco, Ventura, Lim, Vinzons, Rafols, Mumar, and others, limiting the power of the Electoral commission to the judging of all cases contesting the elections, returns, and qualifications of the members of the National Assembly. Explaining the difference between the amendment thus proposed and the

provision of the draft, Delegate Roxas, upon the request of President Recto, said:

""The difference, Mr. President, consists only in obviating the objection pointed out by various delegates to the effect that the first clause of the draft which states "The election, returns, and qualifications of the members of the National Assembly" seems to give to the Electoral Commission the power to determine also the election of the members who have not been protested. And in order to obviate that difficulty, we believe that the amendment is right in that sense * * * that is, if we amend the draft so that it should read as follows: "All cases contesting the election, etc.", so that the judges of the Electoral Commission will limit themselves only to cases in Which there has been a protest against the returns.'

"The limitation to the powers of the Electoral Commission proposed in the compromise amendment did much to win in favor of the Electoral Commission many of its opponents; so that when the amendment presented by Delegate Labrador and others to retain in the Constitution the power of the lawmaking body to be the sole judge of the elections, returns, and qualifications of its members was put to a nominal vote, it was defeated by 98 negative votes against 56 affirmative votes.

"With the defeat of the Labrador amendment, the provision of the draft creating the Electoral Commission, as modified by the compromise amendment, was consequently approved.

""All cases contesting the elections, returns and qualifications of the members of the National Assembly shall be judged by an electoral commission, composed of three members elected by the party having the largest number of votes in the National Assembly, three elected by the members of the party having the second largest number of votes, and three justices of the Supreme Court designated by the Chief Justice, the Commission to be presided over by one of said justices.'

"In the special committee on style, the provision was amended so that the Chairman of the Commission should be the senior Justice in the Commission, and so that the Commission was to be the sole judge of the election, returns, and qualifications of the members of the National Assembly. As it was then amended, the provision read:

""There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be Chairman. The Electoral Commission shall be the sole judge of the election, returns, and qualifications of the Members of the National Assembly.'

"The report of the special committee on style on the power of the Commission was opposed on the floor of the Convention by Delegate Confesor, who insisted that the Electoral Commission should limit itself to judging only of all contests relating to the elections, returns, and qualifications of the members of the National Assembly. The draft was amended accordingly by the Convention.

"As it was finally adopted by the Convention, the provision read:

""There shall be an Electoral Commission * * *. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.'" (Aruego, *The Framing of the Philippine Constitution*, Vol. I, pp. 267, 269, 270, 271 and 272.)

Delegate Roxas rightly opined that "if this draft is regained" the Assembly would have no power over election and qualifications of its member; because all the power is by the draft vested in the Commission.

The Convention, however, bent on circumscribing the latter's authority to "contests" relating to the election, etc. altered the draft. The Convention did not intend to give it all the functions of the Assembly on the subject of election and qualifications of its members. The distinction is not without a difference. "As used in constitutional provisions", election contest "relates only to statutory contests in which the contestant seeks not only to oust the

intruder, but also to have himself inducted into the office." (Laurel on Elections, Second Edition, p. 250; 20 C. J. 58.)

One concrete example will serve to illustrate the remaining power in either House of Congress: A man is elected by a congressional district who had previously served ten years in Bilibid Prison for estafa. As he had no opponent, no protest is filed. And the Electoral Tribunal has no jurisdiction, because there is no election contest. (20 C. J. 58, supra.) When informed of the fact, may not the House, *motu proprio* postpone as induction? May not the House suspend, investigate and thereafter exclude him? [1] It must be observed that when a member of the House raises a question as to the qualifications of another, an "election contest" does not thereby ensue, because the former does not seek to be substituted for the latter.

So that, if not all the powers regarding the election, returns, and qualifications of members was withdrawn by the Constitution from the Congress; and if, as admitted by petitioners themselves at the oral argument, the power to defer the oath-taking, until the contest is adjudged, does not belong to the corresponding Electoral Tribunal, then it must be held that the House or Senate still retains such authority, for it has not been transferred to, nor assumed by, the Electoral Tribunal. And this result flows, whether we believe that such power (to delay induction) stemmed from the (former) privilege of either House to be the judge of the election, returns, and qualifications of the members thereof, or whether we hold it to be inherent to every legislative body as a measure of self-preservation.

It is customary that when a number of persons come together to form a legislative body, " * * * the first organization must be temporary, and if the law does not designate the person who shall preside over such temporary organization, the persons assembled and claiming to be members may select one of their number for that purpose. The next step is to ascertain in some convenient way the names of the persons who are, by reason of holding the proper credentials, *prima facie* entitled to seats, and therefore entitled to take part in the permanent organization of the body. In the absence of any statutory or other regulation upon this subject, a committee on credentials is usually appointed, to whom all credentials are referred, and who report to the body a roll of the names of those who are Shown by such credentials to be entitled to seats, * * * " (Laurel on Elections, Second Edition, pp. 356-357, quoting McCrary on Elections.)

Therefore, independently of constitutional or statutory grant, the Senate has, under parliamentary practice, the power to inquire into the credentials of any member and the latter's right to participate in its deliberations. As we have seen, the assignment by the Constitution to the Electoral Tribunal does not actually negative that power—provided the Senate does not cross the boundary line, deciding an election contest against that member. Which the respondents at the bar never attempted to do. Precisely, their resolution recognized, and did not impair, the jurisdiction of the Electoral Tribunal to decide the contest. To test whether the resolution trenched on the territory of the last named agency, let us ask the question: May the Electoral Tribunal of the Senate order that Body to defer the admission of any member whose election has been contested? Obviously not. Then it must be conceded that the passage of the disputed resolution meant no invasion of the former's realm.

At this juncture the error will be shown of the contention that the Senate has not this privilege "as a residuary power". Such contention is premised on the proposition that the Houses of the Philippine Congress possess only such powers as are expressly or impliedly granted by the Constitution. And an American decision is quoted on the powers of the United States Congress. The mistake is due to the failure to differentiate between the nature of legislative power under the Constitution of the United States, and legislative power under the State Constitutions and the Constitution of the Commonwealth (now the Republic). It must be observed that the Constitution of the United States contains only a grant or delegation of legislative powers to the Federal Government, whereas, the other Constitutions, like the Constitution of the Commonwealth, (now the Republic), are limits upon the plenary

powers of legislation of the government. The legislative power of the United States Congress is confined to the subjects on which it is permitted to act by the Federal constitution. (Dorr vs. U. S. 195 U. S. 140; Martin vs. Hunter 1 Wheat. 326; McCulloch vs. Maryland 4 Wheat. 405; United States vs. Cruikshank 92 U. S. 551.) The legislative power of the Philippine Congress is plenary, subject only to such limitations, as are found in the Republic's Constitution. So that any power, deemed to be legislative by usage and tradition, is necessarily possessed by the Philippine Congress, unless the Organic Act has lodged it elsewhere.

Another line of approach. The Senate, as a branch of the legislative department, had the constitutional power to adopt rules for its proceedings, (section 10 [3] Article VI of the Constitution), and by legislative practice it is conceded the power to promulgate such orders as may be necessary to maintain its prestige and to preserve its dignity. [1] We are advised by the respondents that, after weighing the propriety or Impropriety of the step, the Senate, in the exercise of its authority and discretion and of its inherent power of self-preservation, resolved to defer the administration of oath and the sitting of the petitioners pending determination of the contest. It is not clear that the measure had no reasonable connection with the ends in view, and neither does it palpably transcend the powers of a public deliberative body. On the contrary, there are reasons to believe it was prompted by the dictates of ordinary caution, or of public policy. For, if, as reported by the corresponding constitutional agency, concededly well-posted on the matter by reason of its official duties, the elections held in the provinces of Pampanga, Bulacari, Tarlac, and Nueva Ecija were so tainted with acts of violence and intimidation, that the result was not the legitimate expression of the voters' choice, the Senate made no grievous mistake in foreseeing the probability that, upon proof of such widespread lawlessness, the Electoral Tribunal would annul the returns in that region (see Gardiner vs. Romulo, 26 Phil. 521; Laurel, Elections (2d Ed.) p. 448 et seq.), and declare herein petitioners not entitled to seats in the Senate. Consequently, to avoid the undesirable results flowing from the participation of disqualified members in its deliberations, it was prudent for it to defer the sitting of the respondents. True, they may have no direct connection with the acts of intimidation; yet the votes may be annulled just the same, and if that happens, petitioners would not be among the sixteen senators elected. Nor was it far-fetched for the Senate to consider that "in order to maintain alive the respect for democratic institutions among our people, no man or group of men (should) be permitted to profit from the results of an election held under coercion, in violation of law and contrary to the principle of freedom of choice which should underlie all elections under the Constitution." (Exhibit "A" of petitioners' complaint.)

a. Justices in the Electoral Tribunals.

During our deliberations, it was remarked that several justices subscribing the majority opinion, belong to the electoral tribunals wherein protests connected with the Central Luzon polls await investigation. Mulling over this, we experience no qualmish feelings about the coincidence. Their designation to the electoral tribunals deducted not a whit from their functions as members of this Supreme Court, and did not disqualify them in this litigation. Nor will their deliverances hereat on a given question operate to prevent them from voting in the electoral forum on identical questions; because the Constitution, establishing no incompatibility between the two roles, naturally did not contemplate, nor want, justices opining one way here, and thereafter holding otherwise, *pari materia*, in the electoral tribunals, or vice-versa.

Anyhow, there should be no diversity of thought in a democratic country, at least, on the legal effects of the alleged rampant lawlessness, root and basis of the Pendatun resolution.

However, it must be observed and emphasized, herein is no definite pronouncement that terrorism and violence actually prevailed in the district to such extent that the result was not the expression of the free will of the electorate. Such issue was not tendered in these proceedings. It hinges upon proof to be produced by protestants and protestees at the hearing of the respective contests.

b. Doubt and presumption.

After all is said or written, the most that may be conceded to the industry of petitioners' counsel is that the Senate's power, or lack of power, to approve the resolution is not entirely clear. We should, therefore, indulge the presumption that official duty has been performed regularly, (Rule 123, section 69, Rules of Court), and in the right:

"It is a general principle to presume that public officers act correctly until the contrary is shown. *United States vs. Weed*, 5 Wall, 62.

"It will be presumed, unless the contrary be shown, that a public officer acted in accordance with the law and his instructions. *Moral y Gonzales vs. Ross* (*Gonzales vs. Ross*) 120 U. S. 605; 7 Sup. Ct. Rep. 705.

"Officers charged with the performance of a public duty are presumed to perform it correctly. *Quinlan vs. Greene County*, 205 U. S. 410; 27 Sup. Ct. Rep. 505." (U. S. Supreme Court Reports Digest, Vol. 5, p. 3188.)

"It is presumed that the legislature has acted within its constitutional powers." (See cases cited at p. 257, 16 C. J. S., note 1.)

And should there be further doubt, by all the maxims of prudence, let alone comity, we should heed the off-limits sign at the Congressional Hall, aid check the impulse to rush in to set matters aright—firm in the belief that if a political fraud has been accomplished, as petitioners aver, the sovereign people, ultimately the offended party, will render the fitting verdict—at the polling precincts.

c. Membership in the Constitutional Convention.

The theory has been proposed—modesty aside—that the dissenting members of this Court who were delegates to the Constitutional Convention and were "co-authors of the Constitution" "are in a better position to interpret" that same Constitution in this particular litigation.

There is no doubt that their properly recorded utterances during the debates and proceedings of the Convention deserve weight, like those of any other delegate therein. Note, however, that the proceedings of the Convention "are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of a statute; since in the latter case it is the intent of the legislature we seek, while in the former we are endeavoring to arrive at the intent of the people through the discussions and deliberations of their representative." (*Willoughby on the Constitution*, Vol. I, pp. 54, 55.)

Their writings (of the delegates) commenting or explaining that instrument, published shortly thereafter, may, like those of Hamilton, Madison and Jay in the *Federalist*—here in the Philippines, the book of Delegate Aruego, *supra*, and of others—have persuasive force. (*Op. cit* p. 55)

But their personal opinion on the matter at issue expressed during our deliberations stand on a different footing: If based on a "fact" known to them, but not duly established or judicially cognizable, it is immaterial, and their brethren are not expected to take their word for it, to the prejudice of the party adversely affected, who had no chance of rebuttal. If on a matter of legal hermeneutics, their conclusions may not, simply on account of membership in the Convention, be a shade better, in the eyes of the law. There is the word "deference", to be sure. But deference is a compliment spontaneously to be paid—never a tribute to be demanded.

And if we should (without intending any disparagement) compare the Constitution's enactment to a drama on the stage or in actual life, we would realize that intelligent spectators or readers often know as much, if not more, about the real meaning, effects or tendencies of the event, or incidents thereof, as some of the actors themselves, who sometimes become so absorbed in fulfilling their emotional roles that they fail to watch the other scenes or to

meditate on the larger aspects of the whole performance, or what is worse, become so infatuated with their lines as to construe the entire story according to their prejudices or frustrations. Perspective and disinterestedness help certainly a lot in examining actions and occurrences.

Come to think of it, under the theory thus proposed, Marshall and Holmes (names venerated by those who have devoted a sizable portion of their professional lives to analyzing or solving constitutional problems and developments) were not so authoritative after all in expounding the United States Constitution—because they were not members of the Federal Convention that framed it!

D.—ALLEGED DUTY OF RESPONDENTS.

Quoting section 12 of Commonwealth Act No. 725, counsel for petitioners assert that it was respondents' duty, legally inescapable, to permit petitioners to assume office and take part in the current regular session. The section reads partly:

"The candidates for Member of the House of Representatives and those for Senator who have been proclaimed elected by the respective Board of Canvassers and the Commission on Elections shall assume office and shall hold regular session for the year nineteen hundred and forty-six on May twenty-five, nineteen hundred and forty-six, * * * " (Section 12, Commonwealth Act No. 725.)

We have carefully considered the argument. We opine that, as contended by the Solicitor-General, this provision is addressed to the individual member of Congress, imposing a him the obligation to come to Manila, and join his colleagues in regular session. However, it does not imply that if, for any reason, he is disqualified, the House is powerless to postpone his admission. Suppose that after he elections a member is finally convicted of treason. May not the House refuse him outright admission, pending an investigation (by it or the Electoral Tribunal as the case may be) as to his privilege to sit there? Granting the right to admission as the counterpart of the duty to assume office by virtue of said section 12; we must nevertheless allow that such right would not be peremptory whenever it contacts other rights of equal or superior force. To illustrate: if the law provided that all children, seven years or more, "shall go to school", it can not reasonably be inferred that school authorities are bound to accept every seven-year boy, even if he refuses to pay fees, or to present the certificates required by school regulations.

Furthermore, it would not be erroneous to maintain that any right spelled out of section 12 must logically be limited to those candidates whose proclamation is clear, unconditional and unclouded; and that such standard is not met by petitioners, because in the very document attesting to their election one member of the Commission on Elections demurred to the non-exclusion of the votes in Central Luzon, calling attention to the reported reign of terror and violence in that region, and virtually objecting to the certification of herein petitioners. To be sure, it was this beclouded condition of petitioners' credential (certificate of canvass) that partly prompted the Senate to enact the precautionary measure herein complained of. And finding no phrase or sentence in the Constitution expressly or impliedly outlawing the step taken by that legislative body, we should be, and we are, reluctant to intervene.

Indeed, had the Senate been officially informed that the inclusion of petitioners' name in the Commission's certificate had been made at the point of a gangster's automatic, none will deny the appositeness of the postponement of their induction, pending an inquiry by the corresponding authorities. Yet the difference between such situation and the instant litigation is one of degree, broad and wide perhaps, but not altering the dominant legal principle.

In answer to the suggestions as to abuse of the power, it should be stated that the mere possibility of abuse is no conclusive argument against the existence of the power, for the simple reason that every official authority is

susceptible of misuse. And everybody knows that when any power is wrongfully used, the Government and the people will discover the methods to curb it. Perhaps it is necessary to explain that this decision goes no further than to recognize the existence of Congressional power. It is settled that the point whether such power has been wisely or correctly exercised, is usually beyond the ken of judicial determination.

E.—PARLIAMENTARY PRIVILEGES

One final consideration.

The Constitution provides (Article VI, Section 15) that "for any speech or debate" in Congress, Senators and Congressmen "shall not be questioned in any other place." The Supreme Court of the United States has interpreted this privilege to include the giving of a vote or the presentation of a resolution.

" * * * It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, * * *"(Kilbourn vs. Thompson, 103 U. S. 204, 26 Law Ed., 377, p. 391.)

In the above case, Kilbourn, for refusing to answer questions put to him by the House of Representatives of the United States Congress, concerning the business of a real estate partnership, was imprisoned for contempt by resolution of the House. He sued to recover damages from the sergeant at arms and the congressional members of the committee, who had caused him to be brought before the House, where he was adjudged to be in contempt. The Supreme Court of the United States found that the resolution of the House was void for want of jurisdiction in that body, but the action was dismissed as to the members of the committee upon the strength of the herein above-mentioned congressional immunity. The court cited with approval the following excerpts from an earlier decision of the Supreme Court of Massachusetts:

"These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered, * * * " (103 U. S. p. 203.) (Italics ours)

Commenting on this Congressional privilege, Willoughby relates, apparently as controlling, the following incident:

"In 1910, several Members of Congress having been served with a writ of mandamus in a civil action brought against them as members of the Joint Committee on Printing and growing out a refusal of a bid of the Valley Paper Company, for the furnishing of paper, the Senate resolved that the Justice issuing the writ had 'unlawfully invaded the constitutional privileges and prerogatives of the Senate of the United States and of three Senators; and was without Jurisdiction to grant the rule, and Senators are directed to make no appearance in response thereto'". (Willoughby on the Constitution of the United States, Vol. I, Second Edition, p. 616.)

Respondents are, by this proceeding, called to account for their votes in approving the Pendatun Resolution. Having sworn to uphold the Constitution, we must enforce the 'Constitutional directive. We must not question, nor permit respondents to be questioned here in connection with their . (Kilbourn vs. Thompson, supra.)

Case dismissed. No costs.

Moran, C. J., Paras, Pablo, and Padilla, JJ., concur.

[1] e. g. jeopardy in prosecutions; two-thirds vote to declare law unconstitutional, etc.

[2] Legislative members of the Commission were not sued as assemblymen.

[1] Not qualified as elector—not qualified as congressman (Constitution, Article VI, section 7, in relation with section 94 [a] Election Code.)

[1] See *Lopez vs. De los Reyes*, supra.

HILADO, J., concurring:

I concur.

Petitioners, alleging that they have been elected Senators in the last national elections, have filed this proceeding against respondents who, according to the complaint, have been likewise elected Senators in the same elections. In paragraph III of the complaint it is alleged that respondent Hon. Jose A. Avelino is joined in this proceeding as member and President of the Senate. Two kinds of remedies are sought by petitioners, one ancillary and the other principal. The ancillary they would have consist in a preliminary injunction addressed to "respondents, their officials, employees, agents and other persons acting under them, ordering them", until the order is remanded by the court, "to desist and to abstain from carrying out" the so-called Pendatun resolution complained of. (Exhibit A attached to complaint). The principal remedy, if the suit is to prosper, would be as follows: a judicial declaration that the said resolution is entirely null and void, a definite order of this court prohibiting respondents, and each of them, from preventing petitioners from "continuing in their seats in the Senate of the Philippines and freely exercising their office as Senators, and likewise prohibiting them from adopting any other ulterior procedure to execute the said resolution."

1. Has this court power to issue the writ of preliminary injunction sought by petitioners under the facts alleged in their complaint?

The power of this court to issue auxiliary writs and process is defined in, and conferred by, section 19 of Act No. 136, as follows:

"SEC. 19. Power to issue fill necessary auxiliary writs.—The Supreme Court shall have power to issue writs of certiorari and all other auxiliary writs and process necessary to the complete exercise of Its original or appellate jurisdiction."

Under this provision, such auxiliary writ or process as the writ of preliminary injunction prayed for by petitioners in the instant case, is only issuable by this court, firstly, where this Court is engaged in the exercise of its original (or appellate) jurisdiction in a main case, and secondly, when such writ or process is necessary to a complete exercise of that jurisdiction. This principle is ingrained in and underlies the pertinent provisions of the present Rules of Court (Rule 60). Indeed, it is elementary that an independent action cannot be maintained merely to procure a preliminary injunction as its sole objective. (*Panay Municipal Cadastre vs. Gardiaño*, 55 Phil. 574).

Besides, there are other grounds for holding that this Court lacks jurisdiction to issue the writ of preliminary injunction prayed for by petitioners. It is clear that the rights sought to be exercised or protected by petitioners through this proceeding are political rights and the questions raised are political questions, and it is well settled that the equitable remedy of injunction is not available for such a purpose. The principle has also been incorporated in the rule that a court of chancery will not entertain a suit calling for a judgment upon a political question, and of course this Court has been resorted to in the instant case as a court of equity in so far as injunctive relief is being sought. In the case of *Fletcher vs. Tuttle*, (151 111, 41, 25 L. R. A. pp. 14-3, 146), the definitions of a political right by Anderson and Bouvier are quoted. Anderson defines a political right as a "right exercisable in the administration of government" (Anderson Law Dictionary 905). And Bouvier says: "Political

rights ens1st in the power to participate, directly or indirectly, in the establishment or management of the government.” (2 Bouvier Law Dictionary 579)

* * * * *

“ * * * The prayer of the bill is that, upon the hearing of the cause, both acts be declared unconstitutional and void, and held to be of no effect; and that a writ of injunction issue to Walter C. Tuttle, county clerk of Vermilion county, restraining him from issuing, or causing to be posted, notices of election calling an election for the house of representatives for the eighteenth senatorial district and that such injunction be made perpetual; and that the court grant to the petitioner and to the people all such other and further relief as the case demands.

* * * * *

"From the foregoing statement of these two bills, it seems to be perfectly plain that the entire scope and object of both is the assertion and protection of political, as contradistinguished from civil, personal or property rights. In both the complaint is a legal voter, and a candidate for a particular elective office; and by his bill he is seeking the protection and enforcement of his right to cast his own ballot in a legal and effective manner, and also his right to be such candidate, to have the election called and held under the provisions of a valid law, and to have his name printed upon the ballots to be used at such election, so that he may be voted for in a legal manner. The rights thus asserted are purely political; nor, so far as this question is concerned, is the matter aided in the least by the attempt made by the complaint in each bill to litigate on behalf of other voters or of the people of the state generally. The claims thus attempted to be set up are all of the same nature, and are none the less political.

"As defined by Anderson, a civil right is 'a right accorded to every member of a district, community, or nation,' while a political right is a 'right exercisable in the administration of government'. Anderson Law Dictionary 995. Says Bouvier: 'Political rights consist in the power to participate, directly or indirectly, in the establishment or management of the government. These political rights are fixed by the constitution. Every citizen has the right of voting for public officers, and of being elected. These are the political rights which the humblest citizen possesses. Civil rights are those which have no relation to the establishment, support, or management of the government. They consist in the power of acquiring and enjoying property, or exercising the paternal or marital powers, and the like. It will be observed that every one, unless deprived of them by sentence of civil death, is in the enjoyment of the civil rights, which is not the case with political rights; for an alien, for example, has no political, although in full enjoyment of the civil rights'. (2 Bouvier Law Diet. 579)

* * * * *

"* * * A preliminary injunction having been awarded, it was disregarded by the city officers, who proceeded, notwithstanding, to canvass the vote and declare the result. Various of the city officers and their advisers were attached and fined for contempt, and, on appeal to this court from the judgment for contempt, it was held that the matter presented by the bill was a matter over which a court of chancery has no jurisdiction, and that the injunction was void, so that its violation was not an act which subjected the violators to proceedings for contempt.

* * * * *

"* * * In Georgia vs. Stanton (73 U. S. 6 Wall. 50; 18 Law ed. 721), a bill was filed by the state of Georgia against the secretary of war and other officers representing the executive authority of the United States, to restrain them in the execution of the acts or congress known as the 'Reconstruction Acts,' on the ground that the enforcement of these acts would annul and totally abolish the existing state government of the state, and establish another and different one in its place, and would, in effect, overthrow and destroy the corporate existence of the state, by depriving it of all means and instrumentalities whereby its existence aright and

otherwise would be maintained; and it was held that the bill called for a judgment upon a political question, and that it would not therefore be entertained by a court of chancery; and it was further held that the character of the bill was not changed by the fact that, in setting forth the political rights sought to be protected, it averred that the state had real and personal property, such, for example, as public buildings etc., of the enjoyment of which by the destruction of its corporate existence, the state would be deprived, such averment not being the substantial ground of the relief sought. (*Fletcher vs. Tuttle*, 151 111. 41; 25 L. R. A. 143, 145-147; (italics supplied.)

"SECTION 381. 3. Political Questions.—a. In General.— It is a well settled doctrine that political questions are not within the province of the judiciary, except to the extent that power to deal with such question has been conferred on the courts by express constitutional or statutory provisions. It is not so easy, however, to define the phrase 'political question', nor to determine what matters fall within its scope. It is frequently used to designate all questions that lie outside the scope of the judicial power. More properly, however, it means those questions which, under the constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Among the questions that have been held to be political and therefore beyond the province of the judiciary to decide, are: Questions relating to the existence or legality of the government under which the court is acting; what persons or organizations constitute the lawful government of a state of the Union, or of a foreign country; * * * the canvass of an election. (12 C. J. 878, 879; italics supplied).

"SECTION 20. 4. Only Civil Rights Protected.—The subject matter or equitable Jurisdiction being civil property and the maintenance of civil rights, injunction will issue only in cases where complainant's civil rights have been invaded. Injunctions do not issue to prevent acts merely because they are immoral, illegal or criminal. Courts of equity have no jurisdiction over matters or questions of a political nature,; unless civil property rights are involved and will not interfere to enforce or protect purely political rights. * * *." (32 C. J. 41; italics supplied.)

But petitioners seem to proceed upon the theory that there is a main case here to which the preliminary injunction would be merely auxiliary—one of prohibition, presumably under Rule 67, sections 2, 4, and 7. Rule 67, section 2, omitting impertinent parts, says:

"SEC. 2. Petition for prohibition.—When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial * * *."

To begin with, respondents herein cannot in any rational sense be said to constitute a "tribunal, corporation, board or persons * * * exercising functions judicial or ministerial." To be sure, the functions of the Senate and of its members in the premises are not judicial. It is no less certain, in my not opinion, that they are/ministerial. Indeed, they are not only legislative but discretionary in the highest sense, as more at length demonstrated hereafter.

It is insisted, however, that the provisions of section 12 of Commonwealth Act No.725 imposed upon respondents the ministerial duty of letting petitioners assume office and participate in the regular session for the year 1946 on May 25, 1946. But, as in my opinion correctly contended by the Solicitor General at the argument, this provision is addressed to the members of both Houses of Congress who are to assume office and hold the regular session. Altho to this some who opine differently from us, may counter with the question: What is the use of imposing upon said members the ministerial duty to assume office and hold the session if either House or the other members thereof could prevent them from/doing? In the first place, I would not say that, considering together, as we should, the report of the Commission on Elections to the President of the Senate of May 23, 1946, (Exhibit B), and the certificate of canvass of the same date (Exhibit C), said Commission "proclaimed elected" those candidates whose election may be adversely affected by the Commission's own express reservation as to the validity or invalidity of the votes cast in the provinces of Pampanga, Bulacan, Tarlac, and Nueva Ecija, in the

same sense that they proclaimed elected those not so affected—it would seem that the proclamation made in Exhibit C was based merely upon a numerical canvass or count of the votes cast, the Commission considering itself without authority to discount the votes cast in said four provinces, leaving that question to the Electoral Tribunal for the Senate; and it would seem further, that within the meaning and intent of section 12 of Commonwealth Act No. 725 the phrase "candidates * * * proclaimed elected", rationally construed, is exclusive of those of whose valid election the Commission is the first, in effect, to express very grave doubts. As to these, considering the Commission's report and certificate of canvass together, the Commission, in final effect, far from proclaiming them elected, confesses that it does not really know whether they have been or not. In the second place, I do not admit that any such ministerial duty is imposed upon the members of Congress in the sense that its fulfillment may be compelled by mandamus issuing from the judiciary. In the third place, if we were to concede that the intention of the law is as petitioners contend it to be, that is, that it imposes upon both Houses of Congress and upon the members thereof who legitimately act for them, the ministerial duty of letting even those members, as to whom there exist grounds for suspension, assume office and participate in the Houses' deliberations, I am of the considered opinion that the provision would be null and void for the simple reason that it would be destructive of, and repugnant to, the inherent power of both Houses to suspend members for reasons of self-preservation or decorum. I say null and void, because the principle underlying said inherent power is ingrained in the very genius of a republican and democratic government, such as ours, which has been patterned after that of the United States, and therefore lies at the very foundation of our constitutional system. It was admitted at the argument that when both legislative chambers were the sole judges of the election, returns and qualifications of their members, each chamber possessed such inherent power of suspension, particularly as against members whose election was the subject of contest. When the Commonwealth Constitution transferred to the Electoral Tribunal for each chamber the jurisdiction as sole judge of all contests relating to elections, returns and qualifications of its members, without any provision as to said power of suspension, the clear inference is that the same was left intact, to remain where it was Inherent. silently intended to abrogate and take away a power so vital and so essential.

Coming now more fundamentally to the alleged main case presented by the complaint. As stated at the outset, the principal remedy pursued by petitioners, if this suit is to prosper, and therefore the main case which they seem to allege as justifying the ancillary remedy of preliminary injunction, would be concerned with a judicial declaration by this Court that the so-called Pendatun resolution is entirely null and void, with a definite order of this Court prohibiting respondents, and each of them, from preventing petitioners "from continuing in their seats in the Senate of the Philippines and freely exercising their functions as Senators, and likewise prohibiting them from adopting any other ulterior procedure to execute the said resolution."

This immediately brings to the fore the vital and serious question of whether this Court has jurisdiction to grant the remedy thus prayed for by giving final judgment making the said judicial declaration of nullity and granting the writ of prohibition definitely prohibiting the respondent President of the Senate and respondent senators from executing the above specified acts. Such fundamental principle as the separation of powers, as well as the exclusive jurisdiction of the Electoral Tribunal for the Senate of all contests relating to the elections, returns, and qualifications of its members, are involved.

Our Constitution and laws will be scanned and searched in vain for the slightest hint of an intention to confer upon the courts, including the Supreme Court, the power to issue coercive process addressed to, or calculated to control the action of, either of the other two coordinate departments of the government—the legislative whose power is vested in the Congress) consisting of the Senate and the House of Representatives (Constitution, Article VI, section 1), and the executive whose power is vested in the President (Constitution Article VII, section 1), concerning matters within the sphere of their respective functions. Besides, if we had jurisdiction to issue the writ of preliminary injunction, it must be upon the ground that *prima facie* the facts alleged in the complaint are

sufficient to justify the writ. In that case, we must have the power to make said injunction final if upon a trial on the merits we find those facts proven. (Rule 60, section 10). But since such a permanent or perpetual writ would have to be premised upon the determination that petitioners have been legally and validly elected, which question is beyond our power to decide, it is clear that we lack jurisdiction to issue even the preliminary process. And be it not contended that our preliminary writ is simply to serve while the contest has not been decided by the Electoral Tribunal, because under Act No. 136, section 19, and Rule 60, sections 2 and 3, this Court can issue such a process in aid only of its own jurisdiction over a main case, and not in aid of the jurisdiction of another tribunal—and it is unthinkable that the Supreme Court should be made to serve as a sort of auxiliary court to the Electoral Tribunal.

2. Has this Court jurisdiction of the subject matter of the alleged main case and, consequently, to grant the alleged principal remedy?

The judicial declaration of nullity sought by petitioners, severed from the writ of prohibition prayed for by them, would become, if at all, nothing more nor less than a declaratory relief. Thus divorced from the remedy of prohibition, it will be a mere abstract pronouncement of an opinion of this Court regarding the constitutionality or unconstitutionality of the Pandatun Resolution, giving rise to no substantial relief or positive remedy of any kind. It will order nothing and will prohibit nothing to be done by one party or the other. But not even as such declaratory relief can said judicial declaration be considered under Rule 66, nor its antecedents, Act No. 3736 and Commonwealth Act No. 55, since the Pandatun Resolution is neither a “deed, will, contract or other written instrument * * * or a statute or ordinance,” within the plain and natural meaning of said rule and said acts, aside from the reason that pursuant to the same acts the action for a declaratory judgment should be brought in a Court of First Instance, without any express provision conferring original jurisdiction upon this Court in such cases, which provision is necessary before this Court can possess such original jurisdiction (Act No. 136, section 17), and the final consideration that alike under said Act 3736 and Rule 66, section 6, the court has a discretion to refuse to exercise the power to construe instruments, among other cases, where the construction is not necessary and proper, at the time under all the circumstances. In the case of *Alejandrino vs. Quezon*, (46 Phil. 83, 95), this Court, referring to a case of mandamus, said:

“* * * On the one hand, no consideration of policy or convenience should induce this court to exercise a power that does not belong to it. On the other hand, no consideration of policy or convenience should induce this Court to surrender a power which it is its duty to exercise. But certainly mandamus should never issue from this Court where it will not prove to be effectual and beneficial. It should not be awarded where it will create discord and confusion. It should not be awarded where mischievous consequences are likely to follow. Judgment should not be pronounced which might possibly lead to unseemly conflicts or which might be disregarded with impunity. This Court should offer no means by a decision for any possible collision between it as the highest court in the Philippines and the Philippine Senate as a branch of a coordinate, department, or between the Court and the Chief Executive or the Chief Executive and the Legislature.” (Italics supplied).

It is true that the *Alejandrino* case was one of mandamus. But under the principle of separation of powers, the rule is equally applicable to cases of injunction—in fact, to all cases where it is desired to have the judiciary directly control the action of either the executive or legislative department, or either branch of the latter, concerning matters within their respective province. Moreover, not much scrutiny is required to see that what is here pursued is, in practical effect, an order of this tribunal commanding the Senate or respondents, who represent it, to allow petitioners to remain seated in the Senate and freely exercise their alleged functions and rights as Senators: for no other is the effect of an order prohibiting the Senate or said respondents from preventing petitioners from remaining thus seated and exercising said functions and rights. Looking thru the form to the substance, the petition is really one of mandamus.

As to the writ of prohibition, the complaint asks this Court, after trial on the merits, to enjoin respondents and each of them from preventing petitioners from continuing seated in the Senate and freely exercising the functions of Senators, and likewise, from adapting any other ulterior proceeding in execution of the resolution in question. The writ thus sought would, if granted, be definite and final in its effects. (Rule 67, section 2, 8, and 9). Such a writ of prohibition would necessarily be perpetual or permanent in character and operation, in the same way that a final injunction under Rule 60, section 10, would permanently enjoin the act complained of and perpetually restrain the defendant from the commission or continuance of such act. It would enjoin respondents from preventing petitioners from acting as members of the Senate in exactly the same way and with exactly the same rights and privileges as the other members whose election is unchallenged and uncontested, not only temporarily but for the entire term of the office. But for this Court to so order, it would necessarily have to base its judgment and decree upon the premise that petitioners have been duly and validly elected as members of the Senate. This would inevitably involve a determination of precisely the question, presently contested before the Electoral Tribunal for the Senate, as sole judge under the Constitution, of whether or not said petitioners have been duly and validly elected as Senators. This clearly would be an unconstitutional invasion of the sphere allotted by the fundamental law to said Electoral Tribunal as the sole judge of all contests relating to the election, returns and qualifications of the members of the Senate. All of which means that this Court cannot constitutionally possess jurisdiction over the alleged main case of prohibition. This is another way of saying that petitioners are not entitled to the principal remedy thus sought by them from this Court.

"SEC. 17 (2). Prima Facie Case.—While it is not a ground for refusing a preliminary, injunction that it is not absolutely certain that complainant has the right to relief, yet to authorize a temporary injunction, complainant must make out at least a prima facie showing of a right to the final relief." (32 C. J. 38; italics supplied).

"Reason for Rule.—The injunction pendente lite can be justified only upon the theory that it is a necessary incident to the granting of such final relief as complainants appear to be entitled to. The right to such final relief must appear; if not, the allowance of an injunction is erroneous. *Amelia Milling Co. vs. Tennessee Coal etc. R. Co.*, (123 Fed. 811, and other cases cited.)" (32 C. J., 39 under note 76 beginning on p. 38; italics supplied).

Finally, we come to the great principle of separation of powers. In the case of *Alejandrino vs. Quezon*, *supra*, this Court said (pp. 88, 89):

"There are certain basic principles which lie at the foundation of the Government of the Philippine Islands, which are familiar to students of public law. It is here only necessary to recall that under our system of government, each of the three departments is distinct and not directly subject to the control of another department. The power to control is the power to abrogate and the power to abrogate is the power to usurp. * *

*

* * * * *

"* * * Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power. So it has been held that where a member has been expelled by the legislative body, the courts have no power, irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement."

If mandamus will not lie to compel the performance of purely legislative duties by the legislature, its members, or its officers, how can, under the same principle, injunction or prohibition lie to enjoin or prohibit action of the Legislature, its members, or its officers, in regard to matters pertaining to their legislative functions and over

which, they have exclusive control? And if the courts are powerless to compel reinstatement of an expelled member of the legislative body, it seems inconceivable that under the same system of government the courts should possess jurisdiction to prohibit the expulsion in the first instance. And if the courts cannot interfere to prevent such expulsion, a fortiori they should lack authority to intervene to prevent a mere suspension, which is a less drastic measure against the member. If the expulsion of a member of the Senate is purely a legislative question, as clearly decided in the *Alejandrino* case, the suspension of a member of the same body must equally be of the same nature.

In the same case this Court, in remarking that some of the cases cited therein related to the chief executive rather than to the legislature, said that the same rules which govern the relations of the courts to the chief executive likewise govern the relations of the courts to the legislature.

In *Mississippi vs. Johnson and Ord* (4 Wall., 475), a bill was filed praying the United States Supreme Court to enjoin Andrew Johnson, President of the United States, and E. O. C. Ord, General Commanding in the District of Mississippi and Arkansas from executing certain acts of Congress. The Court, per Chief Justice Chase, said that the single point for consideration was: Can the President be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional? It continued:

"The Congress is the Legislative Department of the Government; the President is the Executive Department. Neither can be restrained in its action by the Judicial Department; though the acts of both, when performed, are, in proper cases, subject to its cognisance.

"The impropriety of such interference will be clearly seen upon consideration of its possible consequences.

"Suppose the bill filed and the injunction prayed for allowed. If the President refuses obedience, it is needless to observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuse to execute the acts of the Congress, is it not clear that a collision may occur between the Executive and Legislative Departments of the Government? May not the House of Representatives impeach the President for such refusal? And in that case could this court interfere in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this Court to arrest proceedings in that court?

"These questions answer themselves.

* * * * *

"* * * we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us.

"It has been suggested that the bill contains a prayer that, if the relief sought cannot be had against Andrew Johnson, as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief as against the execution of an Act of Congress by Andrew Johnson is relief against its execution by the President. * * *"

In the case of *Sutherland vs. Governor of Michigan*, (29 Mich.,320), Justice Cooley, speaking for the Supreme Court of Michigan, had the following to say:

"* * * Our government is one whose powers have been carefully apportioned between three distinct departments, which emanate alike from the people, have their powers alike limited and defined by the constitution, are of equal dignity, and within their respective spheres of action equally independent.

* * * * *

"It is true that neither of the departments can operate in all respects independently of the others, and that what are called the checks and balances of government constitute each a restraint upon the rest. * * * But in each of these cases the action of the department which controls, modifies, or in any manner influences that of another, is had strictly within its own sphere, and for that reason gives no occasion for conflict, controversy or jealousy. The Legislature in prescribing rules for the courts, is acting within its proper province in making laws, while the courts, in declining to enforce an unconstitutional law, are in like manner acting within their proper province, because they are only applying that which is law to the controversies in which they are called upon to give judgment. It is mainly by means of these checks and balances that the officers of the several departments are kept within their jurisdiction, and if they are disregarded in any case, and power is usurped or abused, the remedy is by impeachment, and not by another department of the government attempting to correct the wrong by asserting a superior authority over that which by the constitution is its equal.

"It has long been a maxim in this country that the Legislature cannot dictate to the courts what their judgments shall be, or set aside or alter such judgments after they have been rendered. If it could, constitutional liberty would cease to exist; and if the Legislature could in like manner override executive action also, the government would become only a despotism under popular forms. On the other hand it would be readily conceded that no court can compel the Legislature to make or to refrain from making laws, or to meet or adjourn at its command, or to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws. In these cases the exemption of the one department from the control of the other is not only implied in the framework of government, but is indispensably necessary if any useful apportionment of power is to exist.

* * * * *

"It is not attempted to be disguised on the part of the relators that any other course than that which leaves the head of the executive department to act independently in the discharge of his duties might possibly lead to unseemly conflicts, if not to something worse, should the courts undertake to enforce their mandates and the executive refuse to obey, * * * And while we should concede, if jurisdiction was plainly vested in us, the inability to enforce our judgment would be no sufficient reason for failing to pronounce it, especially against an officer who would be presumed ready and anxious in all cases to render obedience to the law, yet in a case where jurisdiction is involved in doubt it is not consistent with the dignity of the court to pronounce judgments which may be disregarded with impunity, nor with that of the executive to place him in position where, in a matter within his own province, he must act contrary to his judgment, or stand convicted of a disregard of the laws."

In the case of *Alejandrino vs. Quezon*, (supra), we find the following quotation from *French vs. Senate of the State of California*, (146 Cal., 604):

"Even if we should give these allegations their fullest force in favor of the pleader, they do not make a case justifying the interposition of this court. Under our form of government the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the constitution, * * *".

From the case of *Massachusetts vs. Mellon* (262 U. S. 447, 67 Law Ed. 1078, 1084), we quote the following passage:

"* * * If an alleged attempt by congressional action to annul and abolish an existing state government, 'with all its constitutional powers and privileges,' presents no justiciable issue, as was ruled in *Georgia vs. Stanton*, supra, no reason can be suggested why it should be otherwise where the attempt goes no further, as it is here alleged, than to propose to share with the state the field of state power."

In our case the Senate action through the Pendatun Resolution and the acts alleged to have been performed thereunder, are still less transcendental in comparison to those involved in *Georgia vs. Stanton*, (supra), and

Massachusetts vs. Mellon, (supra), as should be obvious to every one.

In the case of *Barry vs. United States ex tel. Cunningham* (270 U. S., 597, 73 Law Ed., 867, 872), the Federal Supreme Court was concerned with a case where the United States Senate, pending the adjudication of the validity or nullity of the election of William S. Vare as Senator, refused acceptance of his credentials consisting of the returns, upon the face of which he had been elected, and a certificate from the Governor of the State to that effect, and refused to administer the oath of office to him, and to accord the full right to participate in the business of the Senate. It was held that all this "was a matter within the discretion of the Senate". This is strikingly similar to the instant case where the Senate of the Philippines, which I maintain retained its inherent power of suspension after the transfer to the Electoral Tribunal for the Senate of its exclusive jurisdiction to judge contests relating to the election, returns and qualifications of its members, deemed it to be necessary or convenient to suspend the administration of oath to petitioners, their seating in the Senate and their participation in its deliberations, pending final decision by said Electoral Tribunal of the contest concerning their election, which matters were in my opinion within the discretion of said Senate.

In the case of *Massachusetts vs. Mellon*, (supra), the Supreme Court of the United States concluded its decision in these words:

"* * * Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department—an authority which plainly we do not possess."

Strikingly similar, our case is one wherein the substance of the complaint is merely that respondents President and Members of the Philippine Senate have executed and will execute a resolution of that body asserted to be unconstitutional; and this we are asked to prevent, to paraphrase the Federal Supreme Court. I could not do better than make mine the conclusion of that High Tribunal that rather than a judicial controversy which we are asked to decide, it is a position of authority over the governmental acts of another and co-equal department which we are asked to assume—an authority which plainly we do not possess.

In the adjudicated cases, it has often been said that in actual and appropriate controversies submitted to the courts the judiciary has the constitutional power to declare unconstitutional any legislative or executive act which violates the Constitution; thus, in the case of *Angara vs. Electoral Commission*, (63 Phil. 139, 182), the fourth conclusion established by this Court was as follows:

* * * * *

"(d) That judicial supremacy is but the power of judicial review in actual and appropriate cases and controversies, and is the power and duty to see that no one branch or agency of the government transcends the constitution, which is the source of all authority." (Italics supplied).

But I am of the considered opinion that, aside from such writs, as that of habeas corpus, as may be guaranteed in the Constitution, all others of a purely statutory origin and coercive in their operation are not issuable by the judiciary against either of the other coordinate and co-equal departments. In the latter cases, I think the function of the judiciary, with the Supreme Court as the final arbiter, does not go beyond the declaration of constitutionality or unconstitutionality of the legislative or executive act assailed. But some would ask how such a judgment could be enforced as against the other two departments or either of them. I believe that in a democratic system of government, built as it is upon the principle of separation of powers, with the consequent freedom of each department from direct control by the others, the effectiveness of the adjudications of the courts, in cases properly

coming under their jurisdiction, has perforce to depend upon the conscience of those at the head of, or representing, the other two departments, and their loyalty to the Constitution. I for one am persuaded that when the officers in whom at the time are vested the executive and legislative power should see that the highest court of the land, at the head of the judicial power, has, in a case properly brought before it and within its legitimate jurisdiction, decided that an act of the executive or legislative department is unconstitutional, their conscience and loyalty to the Constitution can safely be relied upon to make them, with good grace, respect such final adjudication. As was said in *Angara vs. Electoral Commission*, (supra, our Constitution is, of course, lacking perfection and perfectibility; but it has been deemed by the framers of this and similar antecedent organic laws preferable to leave the three coordinate departments without power of coercion, one against the other, with the exceptions which may have been therein established, to open the door to mutual invasion of jurisdiction, with the consequent usurpation of powers of the invaded department. And it is here where appeal will have to be made to the conscience of the department concerned. If the executive or legislative department, in such cases, should abuse its powers or act against good conscience, or in a manner disloyal to the Constitution, ignoring the judgment of the courts, the aggrieved party will have to seek his remedy through the ordinary processes of democracy.

During our consideration of this case reference has been made to the decision of the Supreme Court of the United States in *Barry vs. United States, ex rel.* (279. U.S. 597; 73 Law Ed. 867). But an examination of the facts of that case will readily reveal that the question of whether or not Cunningham should have been released on habeas corpus arose from his arrest by order of the United States Senate in the course of certain proceedings before that body, sitting as a tribunal to judge of the election, returns and qualifications of William S. Vare for Senator. It was held that:

"In exercising the power to judge of the elections, returns and qualifications of its members, the Senate acts as a judicial tribunal, and the authority to require the attendance of witnesses is a necessary incident of the power to adjudge, in no wise inferior under like circumstances to that exercised by a court of justice." (p. 873.)

In the last sentence of the same paragraph the court speaks of the power of the Senate "to compel a witness to appear to give testimony necessary to enable that body efficiently to exercise a legislative function;" and the court proceeds "but the principle is equally, if not a, *fortiori* applicable where the Senate is exercising a judicial function." (Italics supplied). It will thus appear that the powers of the Senate there involved were not legislative but judicial in character, which fact differentiates the case from those here cited, wherein purely legislative powers or functions of the Legislature or any branch thereof were in question. There is no wonder, therefore, that the Federal Supreme Court, in the *Barry* case, by what really amounts to an obiter, made the remark at the conclusion of its opinion that "if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law", the power referred to being the judicial power to which the court refers in the paragraph which I have quoted above. In such a case, the Senate being permitted by the Constitution to exercise, for a special purpose, a portion of the powers which primarily belong to the judiciary, it is but proper that any abuse of such limited and special power, constituting a denial of due process of law, should have its redress in the judicial department, with the Supreme Court as the final arbiter; not so in cases where any branch of the legislative department is exercising powers or functions purely legislative in nature and, therefore, within its allotted province under the Constitution, as in the case at bar. The Federal Supreme Court speaks of "judicial interference" without specifying its kind of nature. Much less does it say that such interference will necessarily be coercive in character. But even if it had in mind the writ of habeas corpus there applied for, this being a high prerogative writ (29 C. J. 6-7) the privilege of which is guaranteed by the Bill of Rights in our Constitution (Article III, section 1, paragraph [14]), it is in a class apart from the coercive writs or process spoken of elsewhere in this opinion—it is not merely a statutory remedy, such as

injunction, prohibition, etc., but a constitutional remedy which by its very nature should be binding, in proper cases, upon any department of agency of the government to which it may be lawfully addressed.

TUASON, J., concurring and dissenting;

I concur in the result. On the authority of *Alejandrino vs. Quezon*, (46 Phil. 83), "the writ prayed for cannot issue for the whole simple reason that the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action."

With regret I have to dissent from the majority opinion upholding the constitutionality of the Pendatun Resolution.

That the National Assembly, now Congress, retains ' the power it possessed prior to the approval of the Constitution over the uncontested elections, returns and qualifications of its members, cannot successfully be disputed. This power remains intact, unaffected by Section 11, Article VI of the Constitution, which limits the jurisdiction of the Electoral Tribunal to elections, returns and qualifications of members of Congress that are tile subject of protest.

But within this limited sphere of its jurisdiction, the authority of the Electoral Tribunal is supreme, absolute, exclusive. In the language of Section 11, Article VI of the Constitution, (supra), "the Electoral Tribunal shall be the sole judge of all contests relating to the elections, returns and qualifications of their respective members

In *Angara vs. Electoral Commission*, (63 Phil., 139), it was held, in the light of the deliberations of the Constitutional Convention, that the purpose of the creation of the Electoral Commission "was to transfer in its totality all the power previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal", which, though constituted by majority members of the legislature, "is a body separate from and independent of the legislature." It was said that "the grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature"; that "the express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly," and that "this is as effective a restriction upon the legislative power as an express prohibition in the Constitution." In other parts of the decision, this Court characterized as exclusive the jurisdiction of the Electoral Commission over protests against the election of members of the National Assembly and "determination thereof."

No stronger language than this can be found to emphasize the completeness of the inhibition on the National Assembly from interference in any matter pertaining to an election protest filed with the Electoral Commission.

The resolution in question destroys the exclusive character of the Electoral Tribunal's power. It encroaches upon the Electoral Tribunal's prerogative as the sole judge of all contests relating to the election, returns and qualifications of the members of the Congress. In seeking the suspension of the petitioners on the strength of the reported election irregularities in Central Luzon, irregularities which constitute the sole basis of the main protest, to that extent the resolution passed judgment on the truth or probabilities of the charges, although the judgment may not have been intended as final. At the very least, the resolution touches directly on a matter which involves a senatorial election contest. From whatever standpoint one may look at the Pendatun Resolution, it is hard to escape the conclusion that it oversteps the bounds of the Senate's authority and trespasses on a territory entirely reserved for the Electoral Tribunal.

Viewed from another angle, the legality of petitioners' suspension is open to attack. This suspension was resorted

to as an auxiliary and interlocutory step subordinated to the final outcome of the election protest filed against them. Only a few will disagree with the proposition that the power of the Senate or the House of Representatives to suspend its members as a subsidiary measure for causes connected with their election, returns and qualifications, is, if such power exists, an implied, power derived from the power to remove or exclude, or what is the same thing in this connection, the power to invalidate an election. It follows that where the principal power has been taken away, as in the case of protested elections, the accessory power to suspend vanishes. The fact that the power to suspend may not have been transferred, as is contended, to the Electoral Commission, does not argue in favor of the contention that it still resides in the Congress.

PERFECTO, J., dissenting:

I.—TO MEET OR NOT TO MEET THE CHALLENGE

The challenge has been flung. Shall we evade it by an unmanly and shameful retreat?

By this case the highest tribunal of the land is undergoing a crucial test. Shall it do honor to its constitutional role as the last bastion of the "regime of justice" proclaimed by the Constitution in its preamble, as one of the fundamental goals of the government it established?

The Constitution itself is on the balance. Fundamental principles of good government, basic human rights, prime rules for the existence of an orderly society have been trampled upon. The victims come to the Supreme Court where the last line of democracy lies. Shall we allow that line to give in under the onslaught? Shall we betray the faith of our people?

Shall we refuse to do our part, our duty, our mission, to maintain in our country a government of laws, only because we have to face a powerful group of senators?

Three senators of the Philippines, duly proclaimed as elected by 1,736,407 combined votes cast by qualified Filipino electors, immediately after assuming their respective positions, were deprived of their seats in the Senate through the unscrupulous, irresponsible, and subversive action of a tyrannical and ruthless majority who would not stop even to a downright trampling of the fundamental law. The victims come to us clamoring for relief and justice. Shall we meet the clamor with deaf ears? Shall we remain aloof with callous indifference to a flagrant violation of the Constitution? Shall we leave the victims at the mercy of a despotic oligarchy and allow the latter to supplant democracy? Shall we leave them instead to pin their hopes on popular justice, if they be patient enough not to seek justice by their hands or by the people who exalted them by their suffrage to be their spokesmen in the Senate and in Congress?

Within the remaining span of our life, never shall we be more conscious of the great privilege of performing our duties as the ultimate guardians of the fundamental source of vitality of our nation as an organic whole, whether normality prevails or the people boil in the cauldron of exsurgant partisan passions. The very essence of constitutional government is under our trust, and the momentous question is whether we shall betray that trust and keep unblemished our judicial escutcheon. The blinding; grandeur of the unprecedented opportunity challenging us cannot fail to move our whole being, from enderon to the inner recesses of heart and brains, in the effort to be equal to the high duty.

II.—CONFLICT OF PHILOSOPHIES

Under the admitted lack of perfection and perfectibility of our Constitution, it being the work of men, still we can not subscribe to the nihilistic theory that there are flagrant violations of its provisions, committed in utter

oppression of a minority, to whom our government is incapable of giving redress, and when a judicial controversy arising from, them is submitted for our decision we must allow ourselves to be petrified in buddhistic nirvana and declare ourselves impotent, like the bystander who can not lift a finger to save people crying for help inside a burning house or a little child inclosed in a case full of hungry tigers.

Here, three senators of the Philippines are wantonly deprived of their seats in the Senate as constitutional representatives of the people. Here, chosen spokesmen of many Hundreds of thousands of qualified voters, are silenced and muzzled, and their constitutional rights trampled upon. The transgression of the funds mental law is evident. But it is alleged that the Supreme Court is powerless to protect the victims, to revindicate their constitutional rights and those of the qualified voters who elevated them to office, and to restore law. It is alleged that within our system of government there is absolutely no remedy for such an oppression. The theory is an unmistakable upshot of a philosophy of frustration, defeatism, and despair. We can not subscribe to such an effete philosophy, afflicted with moral asthenia, unable to see but an horizon of failure. We refuse to adopt the despairing and fatalistic attitude of decrepit and impotent senility. Philosophical eunuchry is incompatible with eunomy. Gelded intellectual virility or a dynamic moral effeminacy has no place within the system of Philippine constitutional democracy.

The framing of our Constitution is based on a philosophy of faith and hope, the philosophy of healthy, vigorous and courageous youth, full of the zest of life, brimming with sturdy and exalted ideals, drank with the wine of inspired ambition and filled with enthusiasm for all good and beautiful things, always dreaming of a nobler and more glorious future. Within that strenuous philosophy there is no place for the theory of impotency of our system of government in redressing constitutional transgressions and of the incapability of the courts of justice in giving protection and redress to the victims.

III.—QUALITIES REQUIRED IN JUDICIAL FUNCTIONS

We cannot accept the invitation to bury our heads in ostrich-like fashion in the sands of indifference and inaction because, in having to exercise the constitutional function of administering justice, we will be constrained to face and take action against powerful, defiant or arrogant parties. It is precisely in cases like this where we should never show the least hesitancy in the performance of our official duties and in the exercise of the loftiest function of humanity the administration of justice.

The judicial function calls for those qualifies which, for lack of better words, are described as manliness, moral courage, intellectual decision, firmness of character, and steadfastness of convictions. We accepted our position in this Court fully cognizant of the grave responsibilities it entails and aware that it will exact from us all the best that nature has bestowed on us. We must not give less. We must not betray popular trust. We should not disappoint the people.

IV.—FACTS IN THE CASE

The Commission on Elections, pursuant to the provisions of section 11 of Commonwealth Act No. 725, made the canvass of the votes cast for senators in the election held on April 23, 1946, and on May 23, 1946, proclaimed petitioners as elected. (See accompanying Appendix A.)

Of the 16 senators proclaimed elected, 9 belong to the liberal Party, respondents Jose A. Avelino, Vicente Francisco, Vicente Sotto, Melecio Arranz, Ramon Torres, Mariano J. Guenco, Olegario Olarin, Enrique Magalona, and Salipada Pendatum; and 7 to the Nacionalista Party, the 3 petitioners and Tomas Confesor, Carlos P. Garcia, Tomas Cabili, and Alejo Mabanag.

Of the senators elected in 1941, 8 remain in office, 4 belonging to the Liberal Party, Domingo Imperial, Proceso Sebastian, Sa Rmain Alonto, and Emiliano Tria Tirona; and 4 to the Nacionalista Party, Eulogio Rodriguez, Nicolas Buendia, Pedro Hernaez, and Vicente Rama.

The Senate, therefore, is actually composed of 13 Liberals, with a precarious majority of 2, and a minority of 11 Nacionalistas.

On May 25, 1946, in accordance with Commonwealth, Act No. 725, the Senate convened to inaugurate the regular legislative session for this year.

The session, with all senators present, except Senators Sa Rmain Alonto and Vicente Rama, began by the reading of the proclamation made by the Commission on Elections, as copied in the accompanying Appendix A. No objection having been raised against the proclamation, there being no question as to its legality and regularity, with all the 22 members present, including petitioners, recognized and accepted as full-fledged senators of the Philippines, the Senate proceeded to elect its President, a vacant position previously held by President Manuel A. Roxas. The result was: 3 absent; 2 abstained; for respondent Senator Jose A. Avelino, 10 votes, including his own; for petitioner Senator Jose O. Vera, 8 votes; and for Senator Carlos P. Garcia, 1 vote.

After respondent Senator Avelino assumed his office as President of the Senate, it was moved that he receive the collective oath of office of the newly elected senator's, and, at that juncture, Senator Salipada Pendatum proposed the adoption of a resolution herein attached as Appendix B, as a historical exhibit of the scurviest dealing a minority has ever endured, the dispositive part of which reads as follows:

"NOW, THEREFORE, be it resolved by the Senate of the Philippines, in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of JOSE O. VERA, RAMON DIOKNO, and JOSE ROMERO, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitute the ground of said protests and will therefore be the subject of investigation and determination."

Debate began upon the adoption of the proposed resolution. Afterwards it was unanimously agreed upon to postpone further debate on the question for Monday, May 27, 1946.

The Senate proceeded thereafter to consider another matter during which, in protest against the action taken by the majority on the said matter, all the minority senators walked out from the session hall, leaving therein only 12 majority senators, including the President of the Senate. Taking advantage of the absence of all the minority senators, the 12 majority senators remaining in the session hall approved and adopted the Pendatum Resolution, notwithstanding the fact that the Senate had already postponed the further consideration of said resolution to May 27, 1946, and the 12 majority senators, for lack of quorum, could not, under the Constitution, proceed with the business of the same and, therefore, had not the authority either to reconsider the resolution taken by the Senate, postponing the continuation of the debate on the Pendatum Resolution to May 27, 1946, pr to consider and approve said resolution.

It the time the petition has been filed, May 27, 1946, respondent Senator Jose Avelino, President of the Senate, had already begun to put into effect the Pendatum Resolution by ordering the Secretary of the Senate to erase from the roll of the same the names of the three petitioners.

Among the three petitioners who are complaining of being deprived of their constitutional and legal right to continue sitting in the Senate of the Philippines is the minority Floor Leader Jose O. Vera, who lost the election for President of the Senate by the bare difference of two votes. All the three petitioners, by the high positions they formerly occupied in the government of which we may take judicial notice, are recognized as political leaders of

national stature, whose presence will do honor to any legislative chamber of any country in the world.

V.—PRELIMINARY INJUNCTION

Upon the facts above related and the allegations made in the petition under oath, including the one to the effect that the respondents of the majority party are determined to put into effect immediately the Pendatun Resolution, to deprive the petitioners of their right to sit in the Senate, the "sinister purpose" of which was the approval, without the intervention and participation of petitioners, of important measures, including an alleged terroristic one for judicial reorganization and the highly controversial Bell Bill, as soon as the petition was submitted. In the night of May 27, 1946, the undersigned issued the preliminary injunction prayed for in the petition upon petitioners' filing a cash bond in the amount of P1,000. (Copy of the order is attached as Appendix D.)

On May 29, 1946, the Supreme Court in banc was specially called to session with the specific purpose of considering the issuance of a writ of preliminary injunction. As the Court functioning is a special division of six, and the Supreme Court in banc was then in vacation, the session had to be called upon the initiative of the Chief Justice. In the meantime, the service of the writ was suspended.

The Supreme Court in banc adopted then the following resolutions:

"The Court in banc, having been informed that a writ of preliminary injunction has been issued in G. R. No. L-543, Jose O. Vera, vs. Jose A. Avelino, by Mr. Justice Perfecto under section 2 and 5 of Rule 60, Resolved to set for hearing the petition for preliminary injunction on Saturday, June 1st, 1946, at 10 o'clock a.m., for the purpose of determining whether or not the issuance of said writ was justified. Let notice be given to all the parties.

"The Chief Justice and Associate Justices Paras, Hilado and Bengzon voted to dissolve the preliminary injunction in the meantime."

Upon the adoption of the above resolution, the undersigned instructed the Clerk to proceed with the service of the writ of preliminary injunction, which was immediately served to respondents.

On June 3, 1946, a majority adopted the following resolution, dissolving the writ of preliminary injunction:

"Considering that the preliminary injunction was issued in the case of Jose O. Vera, petitioners, vs. Jose A. Avelino, respondents, G. R. No. L-543, to preserve the status quo and thus prevent the execution of the acts alleged under oath in the last part of paragraph X of the petition, without the intervention of the petitioners; and taking into consideration that this Court, after hearing both parties, at any rate believes and trusts that the respondents will not carry out said acts during the pendency of this proceeding, this Court, without deciding whether or not the said injunction was justified, hereby resolves to dissolve it in the meantime, without prejudice to whatever action or decision this court may take or render on the questions involved in this case including that of jurisdiction.

"Justice Paras concurs in the result.

"Justice Jaranilla absent.

"Justice Perfecto dissents as follows:

"The facts alleged in the petition show that petitioners' fundamental rights have been trampled upon in open defiance of the law and the Constitution; that respondent's, in adopting the Pendatum Resolution and trying to enforce it, usurped constitutional functions exclusively entrusted by the people to the Electoral Tribunal of the Senate, as an independent and separate department of the government; that the people at large, who voted for and of whom petitioners are legal representatives, are intended to be deprived of their voice and vote on matters of transcendental importance to the welfare and future of this nation, that are and to be tinder consideration of the Senate. Respondents did not deny these facts. They reduced themselves to impugn the

inherent and undisputable jurisdiction of this Supreme Court to pass upon the above mentioned flagrant violations of the Constitution and to afford coercive relief to the victims thereof. We cannot agree with an action which history may give a damaging interpretation. We must have a proper respect to the judgment of posterity. We have a plain duty to uphold the Constitution. We must not shirk that sacred duty. We are called upon to protect the constitutional prerogatives of the representatives of the people. Our loyalty to the people does not permit any alternative action to that of extending the cloak of our authority so that the representatives of the people may continue performing unhampered their fundamental prerogatives and functions. We cannot agree with any suspension of their exercise in utter violation of the fundamental law of the land. The sovereignty of the people itself is involved in this case. We cannot suffer the idea that in one of the crucial moments in the performance of our functions and in the compliance of our duty as is pointed out by our conscience, we have faltered. The preliminary injunction must not be dissolved."

Although the belief expressed in the majority resolution is, in effect, a moral injunction, addressed solely to the sense of responsibility, fairness, decency, and patriotism of respondents, without any enforceable legal sanction, the majority being sure that respondents will not betray the trust reposed on them, yet we felt it our duty to dissent because in questions so important as those raised in this case we do not agree with indirect and diplomatic procedures, with, wavering, innocuous and hesitating action, with laodicean measures and resolutions, with equivocal, furtive, and not forthputting attitude. In judicial matters, the best policy is forthrightness, not ambiguity. The way of Themis is always rectilinear. Her path, is never tortuous, labyrinthine, or misleading,

Without any attempt at prophecy, not long after the resolution dissolving the writ of preliminary injunction, events have shown that moral, indirect, or admonitory injunctions by courts of justice are mere sounds transcribed on scraps of paper, not worthier than the sheets on which they are written. Hocking at the credulity, ingenuousness, and complaisance of the majority of this Court, with the exclusion of petitioners, respondents proceeded to carry out the acts alleged in the last part of paragraph X of the petition, such as the approval of the Bell bill, the revamping of the judiciary system of the Philippines, including the unconstitutional reduction of the membership of the Supreme Court from eleven to seven, and the measure which would wipe out the time-honored principle of stability in the Philippine civil service system, by placing many thousands of public officers and employees in iniquitous insecurity in the positions in which they have invested the best energies in years of public service.

For the nonce, it will be hard to gauge and appraise the full consequences of the resolution of June 3, 1946, dissolving the writ of preliminary injunction based on the majority's belief and trust that events have shown to be completely hazy and groundless. It is only our fervent hope that the consequences, whatever they may be, may not dampen the enthusiasm of those who have reposed so much faith in the success of our sovereign Republic as the pursuivant heralding a new era to all subjugated peoples.

On June 8, 1946, petitioners filed a motion praying that the above majority's resolution of June 3, 1946, be reconsidered and that the writ of preliminary injunction be restored. It remained deplorably unacted upon for weeks until respondents were able to consummate the acts above mentioned.

That motion continues now to be pending before us for decision, the same as respondents' motion to dismiss.

VI.—UNCONSTITUTIONAL USURPATION

Section 11 of Article VI of the Constitution reads as follows:

"The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of

Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein, The senior Justice in each Electoral Tribunal shall be its Chairman."

The constitution of the Electoral Tribunals is provided in section 13 of Article VI of the Constitution, wherein it is required that they shall be constituted "within thirty days after the Senate and the House of Representatives shall have been organized with the election of their President and Speaker, respectively."

From the foregoing, it is evident that the power to judge "all contests relating to the election, returns, and qualifications" of senators and representatives, is exclusively lodged in the respective Electoral Tribunal, the exclusivity being emphasized by the use of the word "sole" by the drafters of the Constitution.

By the Pendatun Resolution, respondents exercised, in effect, the power to judge "the election, returns, and qualifications" of petitioners as senators of the Philippines, duly proclaimed as elected on April 23, 1946.

From the very words of respondents themselves there can be no possible mistake as to the fact that, in adopting the Pendatun Resolution, they exercised the judicial power to judge a controversy concerning the election of petitioners as senators of the Philippines.

From their motion to dismiss dated June 6, 1946, through Solicitor General Lorenzo Tañada and Atty. Vicente J. Francisco, himself one of the respondents and is the majority floor leader of the Senate, referring to the reasons behind the adoption of the Pendatun Resolution, we read:

"The Senate considers it against its dignity and inimical to its welfare and integrity to allow petitioners to sit as members pending the final determination of the question whether or not they were duly elected * * * it was an expression of a legislative (?) policy, a desire on the part of the Senate to recognize only members whom it believes were legally elected." (Italics supplies.)

The respondents do not constitute the senate Electoral Tribunal which has the exclusive jurisdiction to exercise said power. The fact that later three among the respondent Senators were chosen to be members of said Tribunal does not change the situation, nor cures the constitutional in road. They, therefore, in adopting the Pendatun Resolution, usurped a power, a jurisdiction, and an authority exclusively belonging to the Senate Electoral Tribunal. The usurpation has been perpetrated in flagrant violation of the Constitution. The Pendatun Resolution, being unconstitutional, is null and void per se.

Among the Justices who voted to declare it invalid, because it wimbles the fundamental law, are two former members of the Constitutional Convention and of its Committee on Style, who took active part in the creation of the Electoral Commission, and a former member of the Second National Assembly which, by constitutional amendment, created the present Senate and the two Electoral tribunals. Justice Hontiveros, one of the present three Justices who took part in the framing of the original Constitution, did not participate in the voting.

We have to bring out these facts because it is only logical that the co-authors of the Constitution and of its amendments must be in a better position to interpret their own will, intention, and purposes as they expressed them in their own words in the fundamental law.

VI.—A.—THE INTENT OF THE PEOPLE IN THE CONSTITUTION IS IDENTICAL WITH THE INTENT OF THEIR DELEGATES

Even the majority themselves admit that, in construing The Constitution of the United States, the writings in "The Federalist" of the delegates to the Constitutional Convention, such as Hamilton, Madison, and Jay, have persuasive force, the same as the book of Delegate Aruego and of other members of our own Constitutional

Convention concerning the Constitution of the Philippines. It is only logical that the authors themselves should be in the advantageous situation of construing more exactly the product of their own minds.

But, as if repenting for making the admission, foreseeing the damaging consequences thereof for the majority's position, they tried to neutralize it or subtract its validity by seconding the sophistic distinction made by Willoughby as to the conclusiveness of the parliamentary proceedings as means of proper construction of the Constitution, on one side, and of the statutes, on the other, since in the legislative proceedings "it is the intent of the legislature we seek," while in the proceedings of the constitutional convention "we are endeavoring to arrive at the intent of the people through the discussions and deliberations of their representatives." The distinction is absolutely groundless. In either the constitutional convention or in the legislature, it is the people who speak through their delegates and representatives, and the intent of the people may only be gathered from the utterances of said delegates and representatives. The "intent of the legislature" in ordinary laws is the "intent of the people," both being undistinguishable for all practical purposes. And the "intent of the people" in a constitutional convention is identified with the "intent" of their delegates thereof. It is absurd, impractical, and against the realities of all experience to mention the "intent of the people" as something different from and in opposition to the intent of their own representatives. The delegates and representatives are the mouthpiece of the people. In the system of representative democracy prevailing in the United States of America and in the Philippines, the people never speak by themselves, but by their chosen mouthpieces—the voters in the matter of the selection of Government officers, and the officers in the matter of expressing the people's will in government or state matters.

There is no essential difference between the parliamentary role of the delegates to a constitutional convention and that of the members of a legislature. The fact that the former are charged with the drafting of the fundamental law and the latter with the enactment of ordinary laws does not change their common character as representatives and mouthpieces of the people. In either the Constitution or in the ordinary statutes, it is the thought and the will of the people which are expressed. What that thought and that will are can only be gathered from the way they are expressed, by the representatives. The thought and the will of the people are interpreted and expressed by the representatives and crystallized in the words uttered and written by them. No one may pretend to know the meaning of the expressions uttered or of the provisions written better than the very persons who poured on them their own thoughts and decisions. The thought and the will of the people remain in the abstract, are incapable of caption, are mere ideological entities, and do not acquire form and can not be pointed out or determined until and unless their representatives in the constitutional convention or in the legislature express them in concrete and specific words of their own. The collective entity of the people is, by its very inbeing, inarticulate. It becomes articulate only through its chosen representatives. Its will is an aplogistic ember that becomes aflame only in the parliamentary actions of its delegates.

And if we are not dreaming, we must accept the fact that what the representatives of the people stereotype either in a constitution or in ordinary laws are their own personal opinions and convictions, their own individual and personal thoughts and wills, although, in doing so they act in their representative capacity. We, the members of the Supreme Court, are also representatives of the people and are performing our official functions in a representative capacity, but the opinions we express and write flow, not from any extrinsic or indwelling reservoir of justice, reserved to us by the sovereign people, but from the spiritual fountain of our own personal consciousness.

We will not dare to dispute any one's claim to wield, in interpreting the fundamental law, the same authority of such judicial giants as Marshall and Holmes, but we consider it completely out of place to conclude that, because in the present constitutional controversy we maintain that the co-authors of our fundamental law are in a better position to construe the very document in which they have infused the ideas which boiled in their minds, and gave

a definite form to their own convictions and decisions, said great justices shall not be so authoritative in expounding the United States Constitution, because they were not members of the federal convention that framed it, even though, it should be recalled, Chief Justice Marshall was one of the outstanding figures in the Virginia Convention that ratified said Constitution. The mention is out of place, because it has not been, and can not be, shown that the constitutional opinions of Marshall and Holmes, for which they were hailed as authorities, are in conflict with, what Madison, Hamilton, Jay, and other delegates to the federal convention had said or written as to the intent expressed in said fundamental law; while in the present controversy, there is an actual conflict of interpretation between former delegates and those whomever have been, and it happens that the former members of the constitutional convention taking part in the disposal of this case, are unanimous in construing the document in the drafting of which they took personal and active part.

Of course, in our atmosphere of freedom of opinion, outsiders may perfectly claim and pretend to know what the delegates to our constitutional convention intended to express in the Constitution better than the delegates themselves, as it is possible for some anthropologists to claim that they are in a position to recognise the children of some parents better than the parents themselves. But everybody must also agree that such facts of clairvoyance are not within the range of normal experience and, therefore, must not ordinarily be accepted at their face value.

VII.—UNCONSTITUTIONAL PROCEDURE

The Pendatun Resolution has been adopted when there was no quorum in the Senate. Those present were only 12, all respondent Senators.

When respondents adopted the resolution, they purportedly adopted it as a resolution of the Senate.

Section 10 (2) of Article VI of the Constitution provides that "a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide."

It is evident, therefore, that, to do business, the Senate, being composed of 24 members, needs the presence of at least 13 senators. "A smaller number may adjourn from day to day and may compel the attendance of absent members," but not in exercising any other power, such as the adoption of the Pendatun Resolution.

The procedure used by respondents in adopting the Pendatun Resolution is, therefore, conclusively unconstitutional.

VIII.—CRIMINAL OFFENSES

Petitioners are among the senators who, having been proclaimed elected by the Commission on Elections, are duty bound to assume office from May 23, 1946, under the following mandatory provision of section 12 of Commonwealth Act No. 725:

"SEC. 12. The candidates for Member of the House of Representatives and those for Senator who have been proclaimed elected by the respective Board of Canvassers and the Commission on Elections shall assume office and shall hold regular session for the year nineteen hundred and forty-six on May twenty-five, nineteen hundred and forty-six. Within thirty-five days after the election has been held, both Houses of Congress shall meet in session and shall publicly count the votes east for the offices of President and Vice-President, in accordance with Article VII, section two of the Constitution. The persons respectively having the largest number of votes for President and Vice-President shall be declared elected; but in case, two or more candidates shall have an equal and largest number of votes for either office, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the Members of Congress in joint session assembled."

If petitioners should fail to discharge the duties of their respective offices, they will incur criminal responsibility and may be punished, according to the Penal Code, with arresto mayor or a fine not exceeding 1,000 pesos, or both.

"ART. 834. Refusal to discharge elective office.—The penalty of arresto mayor or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office."

No one may prevent them from performing the duties of their office, such as attending the meetings of the Senate or of any of its committees or subcommittees, or from expressing their opinions or casting their votes, without being criminally guilty of a violation of parliamentary immunity, a criminal offense punished by the Penal Code with prisión mayor.

"ART. 145. Violation of parliamentary immunity.—The penalty of prisión mayor shall be imposed upon any person who shall use force, intimidation, threats, or fraud to prevent any member of the National Assembly (Congress) from attending the meetings of the Assembly (Congress) or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of prisión correccional shall be imposed upon any public officer or employee who shall, while the Assembly (Congress) is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by penalty higher than prisión mayor." (Words in parenthesis supplied.)

From the foregoing, it is evident that respondents have the inexcusable duty of recognizing petitioners as legal members of the Senate, otherwise they may be liable to criminal prosecution for an offense defined and punished by the Penal Code with imprisonment ranging from 6 years to 12 years.

IX.—PETITIONERS' CREDENTIALS CONCLUSIVE AS TO THEIR RIGHT TO THEIR SEATS IN THE SENATE

It is a duty from which respondents can not legally escape. Otherwise they will invite the sword of Damocles of criminal prosecution to be hanging on their heads. As the Supreme Court of Kansas said in *Re Gunn*, 19 L. R. A. 519:

"But, again, we have what is known as a 'standard work' on parliamentary or legislative practice. It is found in almost every public library, is examined and referred to by every legislative assembly and every congressional body, and its title is 'Cushing's Law and Practice of legislative Assemblies.' * * * In section 240 it is said: 'The principles of parliamentary law applicable to the question are perfectly simple and plain, founded in the very nature of things, established by the uniform practice and authority of parliament, confirmed by reason and analogy. These principles are as follows: First, that every person duly returned is a member, whether legally elected or not, until his election is set aside; second, that no person who is not duly returned is a member, although legally elected, until his election is established; third, that conflicting claimants, both in form legally returned (that would be where two persons had certificates), are neither of them entitled to be considered as members until the question between them has been settled; fourth, that those members who are duly returned, and they alone—the members whose rights are to be determined being excluded—constitute the judicial tribunal for the decision of all questions of this nature.' Upon this question of certificates, we also cite the contest in the United States Senate from Montana, which is the latest utterance of the highest legislative body in this land. In the report of the majority of the committee it is said: 'The majority of the committee are of the opinion that, if this body of persons had lawful and constitutional certificates of their election, that title is a good title against all the world, governing their associates in that body, governing the senate governing everybody who had a lawful duty to determine who are lawfully elected representatives, until there can be an adjudication by the House itself to the contrary; and that nobody can be heard to say, and that no authority can be permitted to

inquire into or determine, the actual facts of the election as against that title." (51st Congress, 1st Session [21 Gong. Record, pt. 3, pp. 8906-2810] pp. 2906-2810], 521).

The Court also quoted from the American and English Encyclopedia, saying:

"The American and English Encyclopedia summarizes the law of the worth of a certificate of election as follows: "It is settled that when it is made the duty of certain officers to canvass the votes, and issue a certificate of election in favor of the successful candidate, a certificate of such officers, regular upon its face, is sufficient to entitle the person holding it to the possession of the office luring an action to contest the right.' Volume 6, p. 373; 33 Law ed. 948; State vs. Buckland, (25 Kan. 359)."

The Court might well have added that Ruling Case Law wholly confirms its stand:

"* * * The certificate entitles the recipient to exercise the office until the regular constitutional authority shall determine who is legally elected officer, and it is the duty of the incumbent of an office at the expiration of his term to surrender it to one who has received a certificate of election and has qualified thereunder. If it is desired to contest the election or qualification of such person, this may be done in the manner prescribed by law for determining claims to an office. Disbursing officers, charged with the payment of salaries, have a right to rely on the apparent title, and treat the officer who is clothed with it as the officer de jure, without inquiring whether another has the better right. While a certificate of election may be superseded by a decree in proceedings to contest the election, it cannot be subjected to attack in a collateral proceeding in which the title may be in question; and if the time should pass within which such proceeding may be instituted the title may become absolute and indefeasible in default of my contest. Hence it has been said that the holder of a certificate of election who has duly qualified is prima facie entitled to the office when his term begins, as against everyone except a de facto officer in possession under color of authority. He is entitled to retain possession and to perform the duties of the office without interference until such certificate is set aside by some appropriate proceeding." (22 R. C. I., 436, 437.)

This Supreme Court laid down the same doctrine by stating the following:

"* * * As a matter of fact, certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the national Assembly and to render him eligible to any office in said body (No. 1, par. 1, Rules of the National Assembly, adopted December 6, 1936).

"Under the practice prevailing both in the English House of Commons and in the Congress of the United States, confirmation is neither necessary in order to entitle a member-elect to take his seat. The return of the proper election officers is sufficient, and the member-elect presenting such return begins to enjoy the privileges of a member from the time that he takes his oath of office (Laws of England, vol. 12, pp. 331, 332; vol. 21, pp. 694, 695; U. S. C. A., Title 2, secs. 21, 25, 26). Confirmation is in order only in cases of contested elections where the decision is adverse to the claims of the protestant. In England, the judges' decision or report in controverted elections is certified to the Speaker of the House of Commons, and the House, upon being informed of such certificate or report by the Speaker, is required to enter the same upon the Journals, end to give such directions for confirming or altering the return, or for the issue of a writ for a new election, or for carrying into execution the determinates circumstances may require (31 & 32 Vict., c. 125, sec. 13). In the United States, it is believed, the order or decision of the particular house itself is generally regarded as sufficient, without any actual alteration or amendment of the return (Cushing, Law and Practice of Legislative Assemblies, 9th ed., sec. 166) ." (Angara vs. Electoral Commission, 63 Phil. 139, 180, 181.)

As a matter of fact, in the Gunn case, the Supreme Court of Kansas had occasion to comment on the exclusion of ten duly proclaimed members from the roll of the House, and unhesitatingly condemned it in these words.

"It seems that while 10 contestants are marked in the Dunsmore Journal as present, but not voting, 10 names on the certified roll are wholly omitted. Any rightful reason for such omission does not appear. We cannot

perceive any valid reason for such omission, even if 10 certified members had their seats contested. Every person duly returned to a house of representatives, and having a certificate, is a member thereof, whether elected or not, whether eligible or not, until his election is set aside. And this must be set aside by the House, not by the individual members before Organization, not by any one member, not by any contestant, not by any mob. Before organization, a few members properly elected, meeting in caucus or otherwise, cannot pass upon the 'elections, returns, and qualifications of the members of the House to be thereafter organized. If one member, before organization can object to any other member duly returned and having a certificate, then all members can be objected to, and there could be no one left to organize any house. In *McCrary on Election* (2d ed., s. 204) the practice is thus stated; 'Where two or more persons claim the same office, and where a judicial investigation is required to settle the contest upon the merits, it is often necessary to determine which of the claimants shall be permitted to qualify and to exercise the functions of the office pending such investigation. If the office were to remain vacant pending the contest, it might frequently happen that the greater part of the term would expire before it could be filled; and thus the interests of the people might suffer for the want of a public officer. Besides, if the mere institution of a contest were deemed sufficient to prevent the swearing in or the person holding the usual credentials, it is easy to see that very great and serious injustice might be done. If this were the rule, it would only be necessary for an evil-disposed person to contest the right of his successful rival, and to protract the contest as long as possible, in order to deprive the latter of his office for at least a part of the term; and this might be done by a contest having little or no merit on his side for it would be impossible to discover in advance of an investigation the absence of merit. And, again, if the party holding the ordinary credentials to an office could be kept out of the office by the mere institution of a contest, the organization of a legislative body—such, for example, as the House of Representatives of the United States— might be altogether prevented by instituting contests against a majority of the members; or what is more to be apprehended, the relative strength of political parties in such body might be changed by instituting contest against members of one or the other of such parties. These considerations have made it necessary to adopt and to adhere to the rule that the person holding the ordinary credential shall be qualified and allowed to act pending a contest and until a decision can be had on the merits.

"Now, why should not this principle be followed? Why should not this rule, which is universal throughout the states of this Union, and which is accepted and adopted by Congress, be followed in the state of Kansas? It has history to sustain it. It has the wisdom of long years of legislative experience to sustain it. It has reason to sustain it. And let us here remark that in every state of this Union where, through political excitement or personal contests, a different role has been adopted, disturbance, violence, and almost bloodshed have always occurred." (Pp. 522-585.)

X.—ELECTORAL CONTESTS ON LEGISLATIVE POSITIONS

Much reliance has been placed by respondents on the *Rafols* case in support of their authority to suspend the seating of petitioners through the *Pendatun* Resolution.

We agree that not enough emphasis may be placed on said case, although not as an isolated one but as the initial link of a chain of historical events handing with the leading and epoch-making, although not enough of the publicized, case of *Angara vs. Electoral Commission*, decided on July 15, 1956, which reversed the pusillanimous, vacillating, and self-contradictory majority position taken in *Alejandrino vs. Quezon*, decided on September 11, 1954.

A little piece of history will be helping.

In 1925, Nicolas A. Rafols was re-elected as representative from one district of Cebu. The House of Representatives of the 7th Philippine legislature suspended his seating. The resolution for suspension was passed after a bitter parliamentary debate between members of the majority belonging to the Nacionalista Party and the members of the minority belonging to the Democrata Party. The House was then presided over by Speaker

Manuel A. Roxas, now President of the Philippines, and among those who with us opposed the resolution for suspension were Representative Jose Avelino from Samar, now President of the Senate, and the minority floor leader, Claro M. Recto, who later became President of the Constitutional Convention. Justice Briones, like ourselves, happened then to be also a member of the House of Representatives. The arbitrariness and injustice committed against Representative Rafols were bitterly resented and rankled deep in the hearts of the minority who felt they were despotically trampled upon by a bulldozing majority.

The Pro-Anti political struggle in 1934 resulted in new alignments. Former Democrat Avelino and Recto happened to align with the Anti majority, the same as Justice Hontiveros, who also became a Delegate to the constitutional convention; and former Nacionalistas Manuel A. Roxas and Manuel C. Briones happened to align with the Pro minority.

In 1934, the Constitutional Convention was presided over by Claro M. Recto, as President, Ruperto Montinola, as First Vice President, and Teodoro Sandico, as Second Vice President. All of them belonged to the Democrats Party when in 1925 injustice was committed against Representative Rafols. Recto and Sandico were aligned with the Anti majority and Montinola with the Pro minority.

Although the Pro delegates of the Convention were only about one-fifth of all the members, some of them were elected to preside over important committees—Rafael Palma, on principles; Jose P. Laurel, on the bill of rights; Manuel C. Briones, on legislative power; and ourselves, on citizenship. By his leading and influential role in the drafting of the Constitution, Llanuel A. Roxas was pointed out as the Hamilton of our Convention.

With such men and with their background, the Convention introduced the innovation of creating the Electoral Commission of the National Assembly, to which the power to judge upon the election, returns, and qualifications of legislators, formerly exercised by legislative bodies, was transferred. The innovation was introduced precisely with the purpose of avoiding the repetition of such abuses and injustices as those committed against Rafols, by lodging the judicial power of deciding electoral contests for legislative positions to where it should logically belong—to a judicial body, which is expected to do justice and not to serve partisan political interests without compunctions and scruples.

Although the initiative came from the minority Pros, it was wholeheartedly supported by the majority Anti leaders. The members of the Constitutional Convention, with the most prominent leaders thereof, were fully aware of how changeable the political fortunes of men are, and it was in the Interest of everybody that the rights of the minority be equally protected as those of the majority.

Through Mr. Justice Laurel, a former member of the Constitutional convention, this Supreme Court said:

"The members of the Constitutional Convention who framed our fundamental law were in their majority men mature in years and experience. To be sure, many of them were familiar with the history and political development of other countries of the world. When, therefore, they deemed it wise to create an Electoral Commission as a constitutional organ and invested it with the exclusive function of passing upon and determining the election, returns and qualifications of the members of the National Assembly, they must have done so not only in the light of their own experience but also having in view the experience of other enlightened peoples of the world. The creation of the Electoral Commission was designed to remedy certain evils of which the framers of our Constitution were cognizant. Notwithstanding the vigorous opposition of some members of the Convention to its creation, the plan, as hereinabove stated, was approved by that body by a vote of 98 against 58. All that can be said now is that, upon the approval of the Constitution, the creation of the Electoral Commission is the expression of the wisdom and 'ultimate justice of the people.' (Abraham Lincoln, First Inaugural Address, March 4, 1861.)

"From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its

totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests devoid of partisan considerations which prompted the people, acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, aid further endowed with judicial, temper by including in its membership three justices of the Supreme Court,

"The Electoral Commission is a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution. * * *

"The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution (Ex parte. Lewis. 45 Tex. Crim. Rep., 1; State vs. Whisman, 36 S. D., 260; L. R. A., 1917B, 1)." (Angara vs. Electoral Commission, 63 Phil., 139, 174-176.)

XI.—SEPARATION OF POWERS

There is much misunderstanding as to the real import, meaning, and scope of the much vaunted principle of separation of powers due to the confusion in many minds between two conceptions: one, naive and vulgar; and the other, constitutional and strictly juridical. The trouble lies in the fact that, for lack of a more appropriate term, the word separation has been used to convey a group of concepts and ideas, when the word only expresses just one partial aspect of one of said concepts and ideas. Thus a misconception results by confounding a part with the whole or the whole with the part.

The vulgar notion of separation of powers appears to be simple, rudimentary, and clear-cut. As a consequence, the principle of separation of powers creates in the mind of the ignorant or uninitiated the images of the different departments of government as individual units, each one existing independently, all alone by itself, completely disconnected from the remaining all others. The picture in their mental panorama offers, in effect, the appearance of each department a complete government by itself. Each governmental department appears to be a veritable state in the general set up of the Philippine state, like the autonomous kingdoms and princedoms of the maharajahs of India. Such undiscerning and rudimentary notion can not fit in the pattern framed by the Filipino people through their representatives in the Constitutional Convention. The true concept of the principle, of separation of powers may not be obtained but in conjunction with the political structure set up by the Constitution and only in accordance with the specific provisions thereof.

The drafters of the Constitution were fully acquainted with the then prevailing confusions and misconceptions as to the meaning of the principle of separation of powers. One outstanding instance is shown in the self-contradicting, courageless decision in *Alejandrino vs. Quezon* (46 Phil. 83), where the majority deflected consequences of the premises from the natural and logical unanimously agreed upon by all the members of the Court, using as a subterfuge an erroneous, disrupting, and subversive interpretation and application of the principle of separation of powers, becoming since a fetish of a class of unanalytical constitutional doctrinaires, distressingly unmindful of its dangerous implications, eager to emulate, in proclaiming it as a legal dogma, the plangent exertions of housetop bawlers preaching the virtues of a new panacea.

Fully knowing the prevailing misconceptions regarding said principle, although, there was an implicit agreement

that it is one of those underlying principles of government ordered by the Constitution to be established, the delegates to the Constitutional Convention purposely avoided its inclusion in the Declaration of Principles inserted as Article II of the fundamental law. They even went to the extent of avoiding to mention it by the phrase it is designated.

XII.—CONSTITUTIONAL CONCEPTION—THE ONLY ONE ACCEPTABLE

The only acceptable conception of the principle of separation of powers within our democracy is the constitutional one. We must reject any idea of it as something existing by itself, independent of the Constitution and, as some misguided jurist would have it, even superior to the fundamental law of the land.

"The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere, * * * The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution." (Angara vs. Electoral Commission, 63 Phil., 139, 156, 157.)

The framers of the Constitution had never intended to create or allow the existence of governmental departments as autonomous states within the republican state of the Philippines. The three departments mentioned in the Constitution were created, not as complete independent units, but as limbs and organs of the organic unit of the government ordained to be established. So each department is independent and separate from the others in the sense that it is an organ specifically entrusted with the performance of specific functions, not only for the sake of efficiency resulting from division of labor, but to avoid tyranny, despotism, and dictatorship which, as experience and history have taught, result from the concentration of government powers in one person or in an oligarchical group.

XIII.—FUNDAMENTAL IDEA OF UNITY

The idea of unity is fundamental in our Constitution.

The Filipino people ordained and promulgated the Constitution "in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy" (Preamble of the Constitution). "The Philippines is a republic state. Sovereignty resides in the people and all government authority emanates from them" (section 1, Article 11, Constitution). Under this principle we must view the whole government as a unit, and all departments and other government organs, agencies and

instrumentalities as parts of that unit in the same way as the head, the hands, and the heart are parts of a human body.

By examining the provisions of the Constitution, the vulgar notion of the principle of separation of powers can be shown to be wrong, as there is neither an office nor a department, created or allowed to be created under the Constitution, that may be considered as effectively separate from the others, as the misinformed people would have it. As a matter of fact, there is no government power vested exclusively in any authority, office, or government agency. Section 1 of Article VI vests the legislative power in a Congress of the Philippines, but this provision does not preclude the president of the Philippines and the Supreme Court from partaking in the exercise of legislative power. The President has the initiative in the making of appropriations which may not be increased by Congress except those pertaining to Congress itself and the judicial department, and the President may veto any bill enacted by Congress (section 19 and 20, Article VI, of the Constitution). The Supreme Court may declare unconstitutional and, therefore, nullify a law enacted by Congress and approved by the President of the Philippines (sections 2 and 10, Article VIII, of the Constitution). The Supreme Court exercises, besides, legislative power in promulgating rules concerning pleading, practice, and procedure in all courts (section 13, Article VIII, of the Constitution).

The executive power is vested in a President of the Philippines (section 1, Article VII, Constitution of the Philippines), but the Senate and House of Representatives, through the Commission on Appointments, take part in the exercise of the executive power of appointment (section 12, Article VI, and section 10[3], Article VII, of the Constitution), and in the granting of amnesty and in making treaties (sections 10[6] and 10[7], Article VIII, of the Constitution). The Supreme Court exercises executive power regarding the transfer of judges from their districts to another. (Section 7, Article VIII, of the Constitution.) Tribunals' power to order the execution of their decisions and mandates is of executive character.

The judicial power is vested in one Supreme Court and in such inferior courts as may be established by Law (section 1, Article VIII, of the Constitution). But there are many instances wherein the President of the Philippines must administer justice, so it is required from him by the Constitution to swear to "do justice to every man" (section 7, Article VII, of the Constitution). And by impeachment proceedings, the House of Representatives and the Senate exercise judicial function (Article IX, of the Constitution). Their power to construe and apply their own rules and their disciplinary power to punish their own members for disorderly conduct are of judicial nature.

Furthermore, there are specific functions of government entrusted to agencies other than the three great departments of government, the legislative, the executive, and the judicial. The judicial function of judging contests as to election, returns, and qualifications of senators is entrusted to the Electoral Tribunal of the Senate; and that of judging contests as to election, returns, and qualifications of representatives to the Electoral Tribunal of the House of Representatives (section 11, Article VI, of the Constitution). The exclusive function of auditing the government accounts is entrusted to a constitutional officer, the Auditor General (Article XI, of the Constitution), and the administrative function of supervising elections is entrusted to the Commission on Elections (Article X, of the Constitution).

To understand well the true meaning of the principle of separation of powers, it is necessary to remember and pay special attention to the fact that the idea of separation refers, not to departments, organs, or other government agencies, but to powers exercised. The things separated are not the subject of the powers, but the functions to be performed. It means division of functions, but not of officials or organs which will perform them. It is analogous to the economic principle of division of labor practiced in a factory where multiple manufacturing processes are performed to produce a finished article.

XIV.—APPLICATION OF THE PRINCIPLE OF SEPARATION OF POWERS

In the discussion of the question how the principle of separation of powers must be applied, misunderstood ideas have been asserted as springboard to jump to rash and unfounded conclusions. Among such assertions is the one which would have the three great departments of government, not only co-equal in dignity, but, notwithstanding their admitted coordination, as actual sovereigns—as if within the sphere of the sovereignty of our people the existence of other sovereigns can be admitted—each one with full powers to destroy and trample upon the Constitution, with the victims absolutely incapable and powerless to obtain redress against the offense. Such an assertion would make of said departments as states within a state. The fundamental error of the assertion lies in the failure to consider the following principle of the Constitution.

"Sovereignty resides in the people and all government authority emanates from them." (section 1, Article II.)

Each department of government is nothing but a mere agency by which the people exercises its supreme sovereignty. Within the framework of the Constitution, our government may be compared to a human being; the legislative department is the brain that formulates policies and rules through the laws it enacts; the executive department is the hand that executes such policies and rules; the judicial department is the conscience that declares what is wrong and what is right, and determines what acts are in consonance with or inimical to the constitutional unity as the very condition of life and survival.

The brain that defines policies and the hand that executes them may go astray and disregard, by their physical power, the infallible pronouncements and admonitions of conscience; but nothing can and should stop conscience in its great ethical mission as a condition indispensable to existence itself. By the same token, nothing can and should silence tribunals as the organs, in the government set up by the Constitution, of the collective conscience of the people. In the long trip of destiny, that collective conscience shall ever be the guiding star, unerring even in the gloomiest confusions.

Applying to the case at bar the principle of separation of powers in its true meaning, the logical result will be precisely the opposite of the position taken by respondents who, unwittingly, are insistently invoking it to challenge the power, authority, and jurisdiction of this Supreme Court to entertain the petition and to grant petitioners coercive relief.

From the facts of the case, it is evident that respondents encroached upon, invaded, and usurped the ancillary power of suspend petitioners in relation to the power to judge electoral contests concerning senators, a power which the Constitution specifically assigns to the Senate Electoral Tribunal, exclusive of all other departments, agencies, or organs of government. That power of suspension is accessory, adjective, complementary, and ancillary to the substantial power to judge said electoral contests. The accessory must follow the principal; the adjective, the substantive; the complementary, the complemented.

"It is a settled rule of construction that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, Constitutional Limitations, eight ed., vol. I, pp. 138, 139)." (Angara vs. Electoral Commission, 63 Phil. 159, 177.)

That power of suspension may, in the interest of reason and justice, be exercised by the Senate Electoral Tribunal in relation to an electoral contest, among other possible cases that can be surmised, where two or more allegedly elected senators are in possession of apparently valid credentials of having been proclaimed as duly elected. In such a case, as the Constitution does not allow more than twenty-four senators to sit in the Senate and there is, in the meantime, no possibility of determining who among the contestants have been duly elected—all the claimants

being in possession of incompatible, self-denying and self-destroying credentials—reason counsels that all of them be suspended by the Electoral Tribunal pending the presentation of the necessary evidence to allow one of them to take his seat in the Senate until the contest is finally decided.

The usurpation perpetrated by respondents is a flagrant violation of the principle of separation of powers, they having invaded a ground belonging exclusively to the Senate Electoral Tribunal.

XV. THE SENATE WITHOUT POWER TO SUSPEND ITS MEMBERS

Respondents lack the power of suspension, not only as ancillary remedy in senatorial election contests, but even in the exercise of the Senate judicial power to punish its members for disorderly conduct. The majority and the minority of the Supreme Court in the case of *Alejandrino vs. Quezon* (46 Phil. 83), agreed unanimously with respect to said Senate judicial power. Justice Malcolm, speaking for the Court in said case, stated:

"As to whether the power to 'suspend' is then included in the power to 'punish,' a power granted to the two Houses of the Legislature by the Constitution, or in the power to 'remove,' a power granted to the Governor-General by the Constitution, it would appear that neither is the correct hypothesis. The Constitution has purposely withheld from the two Houses of the legislature and the Governor-General alike the power to suspend an appointive member of the Legislature.

"It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew; but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal." (P. 96.)

And Justice Johnson, who dissented on another ground, explained the ruling in greater detail as follows:

"The power to punish for misbehavior was intended purely as a disciplinary measure. When a member of the Legislature is removed either by the Governor-General or by the Legislature, a vacancy exists, and the law gives the Governor-General the right to appoint, and the people of the district the right to fill the vacancy by election, so that the people may again, under either case, be represented. A 'suspension' of a member, however, does not create a vacancy, and the people of the district are without a representative and the Governor-General cannot appoint one and the people cannot elect one during the period of suspension. They are without representation during that period. They are, for the period of suspension, taxed without representation. If a member, under the power to punish, can be suspended for one year, for the same reason he may be suspended for ten or more years, thus depriving the Governor-General of his right under the law, and the people of the district, of a representative, and without a remedy in the premises.

"If the power 'to punish for disorderly behavior' includes the power to suspend or to deprive a member of all his rights, and if the suspension is in effect a removal, then an appointed member may be removed, under the power to punish, by a mere majority, while the law requires a two-thirds majority to remove an elective member. In other words, if under the power to 'punish,' any member of the legislature, including an appointive member, may be in effect removed, then an elective member may be removed by a majority vote only, thus encroaching upon the power of the executive department of the government, as well as violating the powers conferred upon the legislature, because the Legislature cannot remove an elective member except by two-thirds majority.

"It is strenuously argued by the respondents that the resolution depriving the petitioner 'of all his prerogatives, privileges, and emoluments for the period of one year' is not a removal from his office but a mere suspension.

The resolution does not use the word 'suspend' but does use the word 'deprive.' It provides that the petitioner is 'deprived' of all his prerogatives, etc., for a period of one year. If that word means anything it means that all of the prerogatives, privileges, and emoluments of the petitioner and the citizens whom he represents have been taken from him and them. His prerogatives, privileges, and emoluments constitute his right to be a member of the Senate under his appointment, his right to represent the people of his district, and his right to exercise all the duties and to assume all the responsibilities pertaining to his office. His emoluments constitute his right to receive his salary and the benefits pertaining to his office as a senator. If a value can be placed upon his prerogatives, privileges, and emoluments, and if he has been deprived of them, then it must follow that they have been removed from him, or that he has been removed from them. At any rate, the resolution has separated the petitioner and the people whom he represents and deprived them of all of their prerogatives, privileges, and emoluments for the period of one year; and, for all intents and purposes, he and the people whom he represents, have been deprived of their prerogatives, privileges, and emoluments, and in effect, has been removed from any participation in the legislative affairs of the government.

"A great many cases have been studied on the question of removal and suspension, and we are confident in the assertion that the power to punish does not include the power to remove or suspend. A suspension from an office or a deprivation of the rights of an officer of all his prerogatives, privileges, and emoluments, is in effect a deprivation or a removal from office for the time mentioned in the order of suspension. It has been held that a suspension from office for an indefinite time and lasting for a period of six months, lost its temporary character, ceased to be a suspension, and in effect became a removal from such office. It was held, in the case of *State vs. Chamber of Commerce*, that the suspension of a member was a qualified expulsion, and that whether it was called a suspension or expulsion or removal, it in effect disfranchised the person suspended. In the case of *Metsker vs. Kelly*, it was held that a suspension or a deprivation for either a definite or indefinite period is in effect a removal. In the case of *Gregory vs. New York*, it was held that the power to remove an officer or punish him does not include the power to suspend him temporarily from his office. A mere suspension would not create a vacancy, and the anomalous and unfortunate condition would exist of an office,—an officer,—but no vacancy, and of no one whose right and duty it was to execute the office." (Pp. 100-102.)

XVI.—POWER OF JUDICIAL NATURE

The principle of separation of powers can not be invoked to deny the Supreme Court jurisdiction in this case, because to decide the question of validity or nullity of the Pendatum resolution, of whether petitioners are illegally deprived of their constitutional rights and privileges as senators of the Philippines, of whether respondents must or must not be enjoined by injunction or prohibition from illegally and unconstitutionally trampling upon the constitutional and legal rights of petitioners, is a function judicial in nature and, not having been assigned by the Constitution to other department of government, is logically within the province of courts of justice, including the Supreme Court.

The power, authority, and jurisdiction to decide any question as to the allocation of powers by the Constitution are of judicial nature and belong to courts of justice. In denying that power to the Supreme Court, respondents only add insult to injury by maintaining that there is no remedy for any usurpation being committed in adopting the Pendatum Resolution.

"But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of

powers between the several departments and among the integral or constituent units thereof.

"As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. "The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

"The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed 'judicial supremacy' which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislative is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government." (Angara vs. Electoral Commission, 63 Phil. 159, 157-159.)

XVII.—SENATORIAL TERRORISM

There is much loose talk as to the inherent power of the Senate to adopt the unconstitutional Pendatum Resolution for the self-preservation of the Senate, for its dignity and decorum. We are afraid that, by the facts publicly known to everybody, such talks serve only to reveal sheer hypocrisy. There is absolutely no showing as to the undesirability of petitioners' presence in the Senate. There is absolutely no showing that they are guilty of any disorderly conduct or of any action by which they may be subject to criminal prosecution, or that by their conduct they have become unworthy to have a seat in Congress. On the other hand, there are three senators who are under indictment for the heinous crime of treason before the People's Court, not for acts committed before their election, but for acts committed while they were already holding office as such senators. Respondents have not taken any action looking toward the suspension of said three senators. Although we do not propose to criticize respondents for this inaction, as the three senators indicted for treason must be presumed innocent unless and until they are finally convicted by the proper court, such inaction serves to emphasize the iniquitous discrimination committed against petitioners, who have not even been indicted before any court of justice for the slightest violation of law.

The Pendatum Resolution invokes the report of the Commission on Elections as to alleged electoral irregularities in four Central Luzon provinces; but there is absolutely nothing in the resolution to show that petitioners had anything to do with said irregularities, and respondents themselves, in the canvass of votes for President and Vice President, had counted as valid all the votes cast in said Central Luzon provinces and had accepted as good ones the votes they themselves obtained therein. In fact, one of them occupied the first place in one of said provinces. This self-contradicting attitude has absolutely no defense in the judgment of any decent person. To this we must add that the Pendatum Resolution, in fact, misquotes the report of the Commission on Elections in the sense that it tries to convey an impression contrary to said report by quoting parts thereof based on unverified and uncorroborated hearsay evidence, and ignoring its main conclusion in which it is stated that the alleged irregularities did not affect the orderly election in said provinces.

There is much talk as to the alleged terrorism prevailing in the provinces in question during election, but there is absolutely no reliable evidence as to such terrorism that can be found either in the report of the Commission on Elections or in the Pendatum Resolution. Even in the case that such terrorism really happened, there is no reason to make any pronouncement based on it without proper investigation by proper authorities, and in the present case the proper authority that must determine, if such terrorism did really take place and affect the election on April 23, 1945, concerning senators, is the Senate Electoral Tribunal. And until then there is no reason why respondents must themselves resort to senatorial terrorism in order to oppress, muzzle, and crush minority senators, such as petitioners. Congressional terrorism is no better than lawless terrorism. Because it is practiced by despotic government officials does not make it holy and sacrosanct.

XVIII.—NOBODY IS ABOVE THE LAW

There are assertions to the effect that we may exercise Jurisdiction against individual officers of the Senate, but not against the Senate or against respondents. We do not agree with such an unmanly attitude. We do not agree with the theory that the Supreme Court must exercise its judicial power to give redress to the victims of a usurpation only when its decision is addressed to minor officers of government, but not when it is addressed to powerful ones. We will incur a grave dereliction of duty if we should refuse to grant the redress that justice demands only and because we have to reverse an illegal and unconstitutional act committed by a legislative chamber, or a group of its members, specially if the group forms the majority, or by Congress itself. To show that under the Constitution nobody is above the law, we have only to refer to its provision which recognizes in the Supreme Court the power to nullify and declare unconstitutional an act enacted by Congress and approved by the President of the Philippines. A law passed by Congress is enacted with the direct participation of the two great departments of our government, the legislative and the executive. Nevertheless, if the law enacted is unconstitutional, the Supreme Court has the power to declare it so and deny effect to the same.

"The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

"That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent

"This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the letter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

"Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

"This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society.

* * * * *

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each, other, the courts must decide on the operation of each.

"So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

"If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

"This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be given, to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure *Manbury vs. Madison*, (1 Cr. 137, 2 law ed., pp. 60, 73-74).

"But we have found no better expression of the true principle on this subject than the language of Justice Hoar, in the Supreme Court of Massachusetts reported in 14 Gray, 226, in the case of *Burnham vs. Morrissey*. That was a case in which the plaintiff was imprisoned under an order of the House of Representatives of the Massachusetts Legislature for refusing to answer certain questions as a witness, and to produce certain books

and papers. The opinion, or statement rather, was concurred in by all the court, including the venerable Chief Justice Shaw;

"The House of Representatives (says the court) is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court. That House is not the Legislature, but only a part of it, and is therefore subject in its action to the law in common with all other bodies, officers and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because living under a written Constitution, no branch or department of the government is supreme, and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitutions; and if they have not, to treat their acts as null and void. * * *

"In this statement of the law, and in the principles there laid down, we fully concur. (Kilbourn vs. Thompson, 26 Law ed., p. 377, 390.

Professor Edward S. Corwin, in his book "The Twilight of the Supreme Court," says:

"The pivotal proposition was set up that between the making of law and its construction was an intrinsic difference of the most vital nature; and that since the latter function was demonstrably a daily concern of courts, it followed necessarily that the legislature might not perform it in a way to produce finally binding results.

"Applied to the Constitution, this reasoning automatically produces judicial review, is liar shall insists in Marbury vs. Madison the Constitution, a solemn act of the people themselves, was made to be preserved, and no organ of government may alter its terms. But interpretation, which belongs to the courts exclusively and is 'their peculiar and proper province,' does not change the law, it conserves it. By the same token, judicial interpretation of the Constitution is vested with the authority of the Constitution itself." (P. 110.)

"A passage in Cicero's De Legibus, the substance of which was later recalled by Coke, describes the law as 'the silent magistrate and the magistrate as 'the law speaking.' Despite the apparent implication of these words, the Roman law would seem to have regarded interpretation as primarily an extension and continuation of the process of law-making, as the maxim 'cuius est condere est interpreter' appears to bear witness. Reciprocally, the official attitude of the common law has not always escaped skeptical comment. A Year-Book of the fourteenth century records a dispute among the judges over whether they were enforcing reason or only their own will, and two hundred years later we find an Elizabethan bishop asserting flatly: 'Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them.' Suppose the good bishop had known of the Constitution of the United States, a law first spoken in 1789 and subject 150 years later to the 'absolute authority' of the Supreme Court to interpret it!" (Pp. 112-113.)

"What gives the coup de grace to the idea that—in the words of Chief Justice Marshall—'courts are the mere instruments of the law and can will nothing,' is the simple fact that most so-called 'doubtful cases' could very evidently have been decided just the opposite way to which they were decided without the least infraction of the rules of logical discourse or the least attenuation of the principle of stare decisis." (P. 114.)

"In short, decision is choice; the very circumstance which produces doubtful—cases-guarantees 'the sovereign choice' in deciding; them. This circumstance may be described as a factual situation which forthwith divides, as it were, the acknowledged body of established law so far as it bears upon the said facts into two opposed—two antinomial—camps." (P. 115.)

"Should the Constitution be construed 'strictly' or 'liberally'? That depends logically on whether it came from

the people at Large or from state sovereignties. Then there is the antimony of 'inclusive' versus 'exclusive' construction—in *Marbury vs. Madison* Chief Justice Marshall invoked the latter principal, in *McCulloch vs. Maryland* he invoked the former. Again there is the issue whether the Court's mandate to interpret the Constitution embraces the power and duty of adapting it to changed circumstances. Marshall thought that it did, while Taney repudiated any such mission for the Court; and in the recent *Minnesota Moratorium Case* the Chief Justice takes as his point of departure Marshall's doctrine, while Justice Sutherland, dissenting, builds upon Taney's doctrine. Furthermore, there are those diverse attitudes of a shifting majority of the Bench which, though they may never have found clear-out expression in antithetical principles of constitutional construction, have given rise none the less to conflicting courses of decision, the potential bases of future opposed arguments which either counsel or the Court may adopt without incurring professional reproach. In brief, alternative principles of construction, and alternative lines of precedent constantly vest the Court with a freedom virtually legislative in scope in choosing the values which it shall promote through its reading of the Constitution." (P. 117)

"The concept of a 'government of laws' simmers down, therefore, under the Constitution to a power in the Supreme Court which is without statable limits to set the metes and bounds of political authority in both the nation and-the states. But the dominating characteristic of judicial review, wide-ranging though, it be, is that it is ordinarily a negative power only—a power of refusal. The Court can forbid somebody else to act-but cannot, usually, act itself; in the words of Professor Powell, it 'can unmake the laws of Congress, but cannot fill the gap.' " (P. 122.)

"To summarize: From legal history emerge two conceptions of law—that of a code of intrinsic justice, not of human creation but discoverable by human reason, and that of a body of ordinances assertive of human will and owing its binding force thereto. The idea of a 'government of laws and not of men' originally predicated the sway of the former kind of law and a 'legislative power' which was merely a power to declare such law, and hence was indistinguishable in principle from 'judicial power.' But as we saw in the previous chapter, the very essence of the American conception of the separation of powers is its insistence upon the inherent distinction between law-making and law-interpreting, and its assignment of the latter to the judiciary, a notion which, when brought to bear upon the Constitution, yields judicial review. For all that, the idea that legislative power embraces an element of law-declaring power has never been entirely expelled from our inherited legal traditions, while, conversely, modern analysis of the interpretative function exercised by courts plainly discloses that it involves unavoidably an exercise of choice substantially legislative in character; and especially is this so as to the Supreme Court's interpretations of the national Constitution, on account of the wealth of alternative doctrines from which the Court may at any time approach its task of interpretation. In short, the meaning of 'a government of laws' in our constitutional law and theory is government subject to judicial disallowance." (Pp. 146-147.)

XIX.—PARALLELISM WITH THE ANGARA CASE

No better precedent may be invoked to decide several important questions raised in this case than the decision rendered by this very Supreme Court in *Angara vs. Electoral Commission*, *supra*, which may be considered as an outstanding milestone in Philippine jurisprudence.

The facts and legal issues in said case are in exact parallel with the ones in the present controversy. Then, there was a conflict between two independent departments or organs of government, the National Assembly and the Electoral Tribunal. Now the conflict is between two squally independent departments or organs of government, the Senate and the Senate Electoral Tribunal. The differences between the contending parties consist in: (a) that while the former National Assembly constituted the whole legislative department, the present Senate is but a part of the legislative department; (b) that the National Assembly that adopted the resolution then in question and, finally, declared by this Supreme Court as unconstitutional, null, and void, acted as a body, with undisputable

quorum and regularity; while the Pendatum Resolution was adopted by but 12 senators of the majority Liberal Party, when there was no quorum present in the Senate. There is also an accidental difference in the fact that, in the Angara case, the Electoral Commission was the respondent and the National Assembly was not a party, although 6 members thereof were also parties in the case, they constituting a majority of two-thirds of the Electoral Commission membership; while in the present case, the Senate Electoral Tribunal is not a party, and the respondents are the majority members of the Senate, which is but a branch of Congress. In both cases the legislative department upon which the legislative power was vested by the Constitution—the National Assembly in 1936 or Congress in 1946—is definitely not a party.

Another difference between the two cases is the fact that in the Angara case, petitioner sought to nullify a resolution of the Electoral Commission because it was in conflict with one previously adopted by the National Assembly. The Supreme Court, in denying the petition, nullified instead the resolution of the National Assembly as adopted without the powers vested in it by the Constitution, in the present case, petitioners pray for the annulment of the Pendatun Resolution which the respondents or the Senate could not and cannot adopt without transgressing the Constitution.

Many of the conclusions and pronouncements of the Supreme Court in the Angara case may appear as if written expressly to decide several of the very legal issues raised in the present case. This will readily appear if we should read "Senate" and "Senate Electoral Tribunal," respectively, in lieu of "National Assembly" and "Electoral Commission," in the following summarized conclusion in said case:

"(a) That the government established by the Constitution follows fundamentally the theory of separation of powers into the legislative, the executive and the judicial.

"(b) That the system of checks and balances and the overlapping of functions and duties often makes difficult the delimitation of the powers granted.

"(c) That in cases of conflict between the several departments and among the agencies thereof, the judiciary, with the Supreme Court as the final arbiter, is the only constitutional mechanism devised finally to resolve the conflict and allocate constitutional boundaries.

"(d) That judicial supremacy is but the power of judicial review in actual and appropriate cases and controversies, and is the power and duty to see that no one branch or agency of the government transcends the Constitution, which is the source of all authority.

"(e) That the Electoral Commission is an independent constitutional creation with specific powers and functions to execute and perform, closer for purposes of classification to the legislative than to any of the other two departments of the government.

"(f) That the Electoral Commission is the sole judge of all contests relating to the election, returns and qualifications of members of the National Assembly.

"(g) That under the organic law prevailing before the present-Constitution went into effect, each house of the legislature was respectively the sole judge of the elections, returns, and qualifications of their elective members.

"(h) That the present Constitution has transferred all the powers previously exercised by the legislature with respect to contests relating to the election, returns and qualifications of its members, to the Electoral Commission.

"(i) That such transfer of power from the legislature to the Electoral Commission was full, clear and complete, and carried with it *ex necessitate rei* the implied power *inter alia*, to prescribe the rules and regulations as to the time and manner of filing protests.

"(j) That the avowed purpose in creating the Electoral Commission was to have an independent constitutional organ pass upon all contests relating to the election, returns and qualifications of members of the National Assembly, devoid of partisan influence or consideration, which object would be frustrated if the National Assembly were to retain the power to prescribe rules and regulations regarding the manner of conducting said contests.

"(k) That section 4 of article VI of the Constitution repealed not only section 18 of the Jones law making each house of the Philippine legislature respectively the sole judge of the elections, returns and qualifications of its elective members, but also section 478 of Act No. 3387 empowering each house to prescribe by resolution the time and manner of filing contests against the election of its members, the time and manner of notifying the adverse party, and bond or bonds, to be required, if any, and to fix the costs and expenses of contest.

"(l) That confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested or not, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

"(m) That confirmation by the National Assembly of the election of any member against whom no protest had been filed prior to said confirmation, does not and cannot deprive the Electoral Commission of its incidental power to prescribe the time within which protests against the election of any member of the National Assembly should be filed." (Angara vs. Electoral Commission, supra.)

Without the slightest ambiguity, in perspicuous and dear-cut language, the Supreme Court stated the real conflict, grave and transcendental, in said case as follows:

"Here is then presented an actual controversy involving as it does a conflict of a grave constitutional nature between the National Assembly on the one hand, and the Electoral Commission on the other." (Angara vs. Electoral Commission, supra.)

The Supreme Court then, in the full consciousness of the far-reaching importance of the pronouncement it had to make, with manly courage stated:

"From the very nature of the republican government established in our country in the light of American experience and of our own, upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries. * * * Conflicting claims of authority under the fundamental law between departmental powers and agencies of the government are necessarily determined by the judiciary in justiciable and appropriate cases. Discarding the English type and other European types of constitutional government, the framers of our Constitution adopted the American type where the written constitution is interpreted and given effect by the judicial department. * * * The nature of the present controversy shows the necessity of a final constitutional arbiter to determine the conflict of authority between two agencies created by the Constitution. Were we to decline to take cognizance of the controversy, who will determine the conflict? And if the conflict were left undecided and undetermined, would not a void be thus created in our constitutional system which may in the long run prove destructive of the entire framework? To ask these questions is to answer them. Natura vacuum abhorret, so must we avoid exhaustion in owe constitutional system. Upon principle, reason and authority, we are clearly of the opinion that upon the admitted facts of the present case, this court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as 'the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly. (Angara vs. Electoral Commission, supra.

Where the Supreme Court wrote "Electoral Commission" in the last preceding lines, we may else write as well "Senate," "House of Representatives," "Congress," "Senate Electoral Tribunal," "House Electoral Tribunal," or any other constitutional body.

The above pronouncements of the Supreme Court made in the ringing words penned by Justice Jose P. Laurel who, with President Roxas, Justice Briones, Justice Hontiveros, former Justices Romualdez and Recto, and several others, was among the leaders and most prominent figures in the Constitutional Convention, we believe will sound through the ages as the expression of permanent truth and undisputable wisdom. Since the words have been written, the question as to the Supreme Court's jurisdiction to take cognizance and decide controversies such as the present one and to grant redress for or against parties like those included in this litigation, has been unmistakably and definitely settled in this jurisdiction.

XX.—THREE DIFFERENT EDITIONS OF A SENTENCE

Regret can not be repressed when, upon reading the majority opinion, one notices that, in the very first paragraph heading it, truth is unwittingly immolated by, as a counterpart of the Pendatun Resolution and without the benefit of any ritual, attributing to the Commission on Elections an assertion which in fact it did not make.

The Commission is represented to have fathered the statement that in the Provinces of Pampanga, Nueva Ecija, Bulacan, and Tarlac, voting "did not reflect the true and free expression of the popular will,"

This assertion is the third revised edition of a 3-line sentence appearing in the report of the Commission on Elections. For clearness, we will reproduce the three editions, the original one and the amended two:

First edition. In the report of the Commission on Elections, the sentence reads as follows:

"It is believed that the election in the provinces aforesaid did not reflect the true and free expression of the popular will."

Second edition—The drafter of the Pendatun Resolution, who appears to be ready to sacrifice truth if it is necessary to serve or bolster his interests and purposes, in reproducing said statement, without any compunction or scruple, changed the words "it is believed" to the words "This Commission believes" as follows:

"This Commission believes that the election in the provinces aforesaid did not reflect the true and free expression of the popular will."

Third edition.—In the majority opinion the idea of belief by third persons, contained in the report of the Commission, and the idea of belief by the Commission, attributed in the Pendatun Resolution, are eliminated and substituted by a positive statement by the Commission on Elections of a categorical and conclusive nature as follows:

"This Commission on Elections * * * stated that * * * the voting in said region did not reflect the true and free expression of the popular will."

The discrepancy is emphasized by reading the following paragraph of the report of the Commission on Elections:

Except for alleged suppression of the popular will in the Provinces of Pampanga, Tarlac, Bulacan and certain municipalities of Nueva Ecija wherein the voters were allegedly intimidated or coerced by the Hukbalahaps and other lawless elements to such an extent that the election in said provinces is considered a farce, not being the free expression of the popular will, the elections throughout the country were carried on peacefully, honestly and in an orderly manner, as a result of which the respective representative-elect for all the provinces throughout the country have been duly proclaimed by the various boards of provincial canvassers, and the Commission of Election on May 23, 1946, also proclaimed those elected senators in accordance with section 11 of Commonwealth Act No. 725." (Italics supplied)

From the foregoing, it is evident" (1) that the alleged suppression of the popular will in Pampanga, Tarlac, Bulacan, and certain municipalities of Nueva Ecija is mentioned by the Commission only as hearsay information

that the Commission itself, contrary to the idea which the Pendatun Resolution or the majority opinion conveys, does not accept; (2) that to emphasize the Commission's refusal to accept the unverified information, it explicitly and conclusively manifested the "the elections throughout the country were carried on peacefully, honestly and in an orderly manner, as a result of which the respective representatives-elect for all the provinces throughout the country have been duly proclaimed elected by the various boards of provincial canvassers, and the Commission of Elections on May 23, 1946, also proclaimed those elected senators in accordance with section 11 of Commonwealth Act No. 725."

An abiding respect for truth compels us to point out the above glaring error of fact, which is just a fitting prelude and milieu to a long chain of errors of law spread over the opinion of the majority, resulting in conclusions that we are sure will fail to withstand the test of posterity.

XX-A.—UNJUSTIFIED AND RECKLESS PRONOUNCEMENTS

The error of reading in the report of the Commission on Elections assertions contrary to the ones appearing therein, induces the majority to make pronouncements which are necessarily groundless and unjustified, because premised on assertions not borne out by the truth.

Thus, in justifying the adoption of the Pendatum Resolution, the majority assert that "there are reasons to believe it was prompted by that "there are reasons to believe it was prompted by the dictates of ordinary caution, or of public policy" for "if, as reported by the corresponding constitutional agency" (the Commission on Election), the elections held in the Province of Pampanga, Bulacan, Tarlac, and Nueva Ecija "were so tainted with acts of violence and intimidation, that the result was not the legitimate expression of the voters' choice, the Senate made no grievous mistake in foreseeing the probability that, upon proof of such widespread lawlessness, the Electoral Tribunal would annul the returns in that region (see *Gardiber vs. Romulo*, 26 Phil., 521; *Laurel, Elections* [2d Ed.], p. 448 et seq.), and declare herein petitioners not entitled to seats in the Senate."

Taking as point of departure the false assumption, that of attributing to the Commission on Elections a statement that, upon the very face of its report, is contrary to what it made, the majority, not only attribute to the respondent majority of the Senate preternatural prophetic foresight, taking for granted what the Senate Electoral Tribunal will do, but by making the pronouncement pretend to assume an improper role, the one by which, in effect, they pretend to direct and dictate to the Senate Electoral Tribunal what it should do in the pending electoral protests against petitioners, thus recklessly prejudicing the decision and disposal of a litigation pending in an independent tribunal with exclusive and final constitutional jurisdiction over said litigation.

On second thought, it seems that the majority try, with an apologetic attitude, to recede from the bold position of practically announcing what the Senate Electoral Tribunal, three members of which are Justices of the Supreme Court, will do, by beginning to state that "there should be no diversity of thought in a democratic country, at least, on the legal effects of the alleged rampant lawlessness, root and basis of the Pendatun resolution," and ending with the following paragraph:

"However, it must be observed and emphasized, herein is no definite pronouncement that terrorism and violence actually prevailed in a district to such extent that the result was not the expression of the free will of the electorate. Such issue was not tendered in these proceedings. It hinges upon proof to be produced by protestants and protestees at the hearing of the respective contests."

We can not but regret that the endeavor is futile, because it can not subtract a scintilla from the boldness of the pronouncement emphasized with, the following reiteration? "True, they may have no direct connection with the acts of intimidation; yet the votes may be annulled just the same, and if that happens, petitioners would not be

among the sixteen senators elected."

Furthermore, the recession seems only to be apparent, used as a breathing respite, preparatory to another onslaught, no less unjustified, reckless, and out of reason.

Commenting on section 12 of Commonwealth Act No. 725, the majority restrict the provision to those candidates whose proclamation "is clear, unconditional, unclouded," adding—and here comes the aggressive thrust, prejudging petitioners on the basis of an unfounded surmise—"that such standard is not met by petitioners, because in the very document attesting to their election one member of one Commission on Elections demurred to the non-exclusion of the votes in Central Luzon, calling attention to the reported reign of terror and violence in that region, and virtually objecting to the certification of herein petitioners. To be sure, it was this beclouded condition of petitioners' credential (certificate of canvass) that partly prompted the Senate to enact the precautionary measure herein complained of."

The attack does not stop here. It goes even further when, adducing as argument by analogy, an uncharitable example is used by comparing the situation imagined without any evidentiary foundation on fact by the dissenting minority of one in the Commission on Elections with the case if "the inclusion of petitioners' name in the Commission's certificate had been made at the point of a gangster's automatic," although adding that "the difference between such situation, and the instant litigation is one of degree, broad and wide perhaps. * * *

XXI.—FUTILE EFFORT TO NEUTRALIZE THE SWEEPING EFFECT OF DECISION IN ANGARA CASE

In a futile effort to neutralize the sweeping effect of the decision of this court in the Angara case, the majority assume unfoundedly that in said case "no legislative body or person was a litigant before the court," and that "no directive was issued against a branch of the Legislature or any member thereof" the statements being promised on the error of fact and law that two-thirds of the members of the Electoral Commission were assemblymen.

The fact that this Court, in the Angara case, made declarations nullifying a resolution of the National Assembly is, according to the majority, "not decisive," when a better precedent can hardly be cited to show the practical exercise by the Supreme Court of its power to declare null and void any legislative resolution violative of the fundamental law. The majority recognize the power of this Court to annul any unconstitutional legislative enactment, citing as authorities the epoch-making decision of Chief Justice Marshall in *Marbury vs. Madison*, and the following pronouncement of Justice Sutherland in the *Minimum Wage Case* (261 U. S. 544):

"* * * The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority, and if it conflicts with the Constitution, must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power—that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect, and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."

If the above reasoning is accepted by the majority with respect to a law enacted by two Houses of Congress and approved by the Chief Executive, there is absolutely no logic in denying its applicability to mere resolutions adopted by just a legislative branch, by the Senate alone, or by a group of senators acting collectively when the

Senate is without quorum. The Supreme Court has the power to declare null and void such resolutions when they are in conflict with the Constitution, the same as the acts of the President as, according to the decision rendered by this Court in *Planes vs. Gil* (67 Phil. 62, 73, 74), cited with approval by the majority, the Supreme Court has the power of "making an enquiry into the validity or constitutionality of his (the Chief Executive's) acts when these are properly challenged in appropriate legal proceeding."

The majority, accepting the pronouncement in the *Angara* case that this Court could not decline to take cognizance of the controversy to determine the "character, scope and extent" of the respective constitutional spheres of action of the National Assembly and the Electoral Commission, maintain that in the present case, there is actually no antagonism between the Electoral Tribunal of the Senate and the Senate itself, "for it is not suggested that the former has adopted a rule contradicting the *Pendatun* Resolution." This assertion is based on the wrong idea that in order that antagonism may exist between two independent bodies, the attacks should be reciprocal and bilateral, and that it is not enough that one should rashly invade the province of another. The theory is parallel with the Japanese insistence in calling what they term "China Incident" because China was not able to invade in her turn the Japanese mainland of Honshu.

XXII.—FALLACIOUS ARGUMENT

It is argued by the majority that conceding that the petitioners' suspension is beyond the power of the respondents, the petition should be denied, because for this Court to order the reinstatement of petitioners "would be to establish judicial predominance and to upset the classic pattern of checks and balances wisely woven into our constitutional setup." The argument is utterly fallacious. There can be no more judicial predominance because the Supreme Court, without shirking its responsibility, should order that petitioners be reinstated in the full exercise of their constitutional rights, functions and prerogatives, of which they were deprived, in flagrant violation of the fundamental law, than there will be legislative predominance because Congress should refuse to be cowed into prevarication in the exercise of its legislative powers, or executive predominance because the President would not allow denial of his executive functions. And the pattern of checks and balances is not disrupted because the Supreme Court should proceed to perform its judicial duty by granting petitioners the legal redress to which they are entitled.

The indictment of volubility flung by Lord Bryce against "the Supreme Court of the United States, resulting from "the political proclivities of the men who composed it," is emoted by the majority in order to support the rule of conduct that "adherence to established principle should generally, be our guiding criterion." We underline generally, because we prefer it to the word invariably as, otherwise, we will expose ourselves to the English author's indictment, and with more reason if we should reverse the doctrines and principles enunciated in the *Angara* case in order not to displease a controlling majority in the Senate.

XXIII.—NOT DEMIGODS OUTSIDE THE REACH OF LAW

Should respondents disobey any order we may issue in this case, the majority ask, can we punish them for contempt? Of course. They are not demigods, duces, fuehrers, or nippon emperor divinities, who are outside of the reach of law. They do not pretend that they are like the king of France who said *L'état c'est moi*.

But, why should we render respondents the disservice of entertaining the false hypothesis that they may disobey any order we may legally issue? Our people were not crazy enough to elect anarchists to our Senate.

XXIV.—BUILT ON PRECARIOUS FOUNDATION

The majority insist, notwithstanding, in arguing that if we should punish respondents for contempt because they should have disobeyed an order of ours, we would be destroying the independence and equal importance of legislative bodies under the Constitution. We would never imagine that the independence and equal importance of legislative bodies, under the Constitution, should be precariously built upon the unstable and shifting quagmire of immoral immunity to punishment for contempt, an offense punishable under all modern systems of criminal law.

Dogmatizing *ex cathedra*, the majority preached that we must "disabuse our minds from the notion that the judiciary is the repository of remedies for all political and social ills." Shooting in the dark at fantastic hobgoblins, insufflated with extraterrestrial life by supercreative imagination, might be an amusing sport, but is misleading in juridical controversy. No one has ever entertained the false and laughable notion that the judiciary may afford remedies "for all political and social ills." No one, unless he be a paranoiac megalomaniac, may pretend to be the happy possessor of any political or social panacea. The argument is irrelevant because, in this case, we are dealing with a constitutional wrong which, under the fundamental law, can and must be redressed by the judiciary.

XXV.—FLAGRANT INCONSISTENCY

A citizen, deprived of liberty by a resolution to incarcerate him for years, illegally or unconstitutionally adopted by a legislative chamber, according to the majority, may not be denied relief by the courts and "may successfully apply for habeas corpus, alleging the nullity of the resolution and claiming for release," invoking as authorities *Lopez vs. De los Reyes* (55 Phil., 170) and *Kilbourn vs. Thompson* (105 U. S., 168; 26 Law ed., 377). The reason is because the resolution is beyond the bounds of the legislative power, is a usurpation of functions belonging to courts, is an infringement of the Constitution, which is precisely the case of the *Pendatun Resolution*. But the majority would then have only as defendant the officer or person holding the victimized citizen in custody, which officer or person might be a senator or a group of senators.

The majority's inconsistency can not be hidden.

XXVI.—ELECTION CONTESTS—WRONG DEFINITION

The majority maintain that not all the powers of the House or Senate as "the sole judge of the election, returns and qualifications of the members" thereof were transferred to the Electoral Commission, but only "all contests" relating to said election, returns and qualifications. But the use of the words "all contests" in the Constitution does not affect or limit the transfer of all powers. as "the sole judge of the election, returns and qualifications" of the legislative members, because these all powers have always been, from the very beginning, circumscribed by the word "contests." The very words "the sole judge" imply necessarily contests, because if there is no contest, there is nothing to be judged.

The majority adhere to the following quotation: "As used, in the constitutional provision, 'election contests' relates only to statutory contests in which the contestants seek not only to oust the intruder but also to have himself inducted into the office." (*Laurel on Elections*, 2d ed., p. 250; 20 C. J., 58.) The assertion is wrong because there are election contests in which the contestants do not seek to be inducted into office, as when the contestants do not pretend to have won in the election and, admitting that the protestee obtained the majority votes, should, however, be ousted because he is unqualified.

The example of a man, disqualified for having served a long term of imprisonment, elected to either House of Congress, is a good one not in support of the majority's theory that the House may, upon its own authority, investigate and exclude the disqualified person, but to show that the election may be contested before the

corresponding Electoral Tribunal in a proper contest, without the protestant seeking to be himself seated.

XXVII.—UNCONSTITUTIONAL THEORY

The majority's theory that an election contest does not ensue when a member of the House raises a question as to the qualification of another because the former does not seek to be substituted for the latter, is based on the wrong definition of an election contest, the one limiting it to cases wherein protestants seek also to have themselves inducted into the contested office. Having for its basis a wrong premise, the theory can not be correct. The election contests mentioned in section 11 of Article VI of the Constitution include contests "relating to qualifications" of the respective members of the Senate and of the House of Representatives. To maintain that either House may investigate and thereafter exclude a disqualified member, is to maintain a constitutional heresy. An insistent effort to justify and approve an action that violates elemental standards of law and justice, such as the Pendatun Resolution, may often lead one to advancing unwittingly the most unexpected theories.

Invoking as authority the erroneous statement made by one of the attorneys for petitioners during the oral argument to the effect that the power to defer the oath taking until the contest is adjudicated does not belong to the corresponding Electoral Tribunals, the majority gleefully jumps to the conclusion that "then it must be held that the House or Senate still retains such authority, whether we believe that such power (to delay induction) stemmed from the privilege of either House to be the judge of the election, returns and qualifications of the members thereof, or whether we hold it to be inherent to every legislative body as a measure of self-preservation."

Thus we see that the majority seem reluctant to accept the new constitutional setup, by the creation of the Electoral Commission, later substituted by the Electoral Tribunals. They would rather stick to the old order of things when the majority of the Senate and of the House of Representatives before the Commonwealth were the absolute dictators of the election, returns and qualifications of the members of the respective legislative chambers, when they boldly assert that either House has "the privilege "to be the judge of the election, returns and qualifications of the members thereof."

XXVIII.—THE CHARACTER AND PHYSIOGNOMY OF THE CONSTITUTION

The discussions as to the character of the legislative power vested in Congress gives way to a confusion of ideas due mainly to lack of discrimination between preconceived constitutional ideas, ingrained in the mind during university training, and the actual provisions of the Constitution of the Philippines, which enjoy outstanding and substantial advantages over older ones, because the delegates to our Constitutional Convention embodied in it new precepts and principles based on the lessons of one century and a half experience of American and European countries in constitutional government and four decades of Philippine constitutional history and the last juridical and ideological discoveries.

Whether the Constitution of the United States is only a grant or delegation of legislative powers to the federal government and the American state constitutions are mere limitations of plenary powers of legislation, have nothing to do with the true character and physiognomy of our own Constitution which we must examine, not on the mirror of other constitutions, but on the face of its own concepts, precepts and provisions, and there we will see at once that our Constitution is both a grant and a limitation of powers of government decreed by our people, on whom sovereignty resides and from whom all government authority emanates. (section 1, Article II of the Constitution.) The sovereign people is the repository of all powers of government, in fact, also political and social powers. From them emanate, not only all government authority, but the plenary and unlimited power of society which is the foundation of government. Social order is established and maintained by the will of the people. The people is the absolute master of his own destiny. The people is the holder of the universality and residuum of all

human powers. This being a natural conviction of humanity since time immemorial, although not always articulate and vocal, to justify the absolutism of kings and emperors, it had been necessary to create the fiction of the divine genesis of their authority, imposed on the ignorance and religious credulity of superstitious masses, so much so that in certain epochs of history the positions of high priest and king were merged in the same individual. And those who would attach to a high officer or group of high officers of government, no matter in what department, any kind of monarchical or oligarchical absolutism, unlimited because placed above the law and not controllable by the provisions of the Constitution or any agency existing under its authority, are only trying to perpetuate the worn-out tradition of the divine origin of the despotic rulers of the past.

To our mind, no power of government may be exercised by any branch, agency or officer thereof unless expressly or implicitly granted by the people through the Constitution. Subject to the limitations provided therein and in accordance with express provisions, the residuum of legislative, executive and judicial powers, respectively, are vested in Congress, the President, and the Supreme Court. It is wrong to maintain that any legislative power is vested exclusively in the Senate. The legislative power is vested in Congress, composed of the Senate and the House of Representatives, and not in any of its branches alone.

XXIX.—RIZALIAN ADMONITION ON TOLERANCE

Although, there is absolutely nothing in the report of the Commission on Elections or in the Pendatun Resolution itself which imputes upon petitioners any act of disorderly behavior, it not appearing that they have anything to do with alleged irregularities and terrorism in the four provinces of Central Luzon, yet had the Senate elected to deprive petitioners of their seat in the Senate under the power to punish and expel a member for disorderly behaviour provided in section 10(3) of Article VI of the Constitution, and the Senate adopted the Pendatun Resolution in pursuance thereof, the majority of this Court would still dismiss the petition. It appearing that not two-thirds of all the members of the Senate concurred or could concur in the adoption of the Pendatun Resolution and, therefore, under the constitutional provision invoked, the deprivation of petitioners of their seat in the Senate would appear as a flagrant transgression of the fundamental law, the majority of this Court would still shield respondents with the palladium of judicial *noli me tangere*. Respondents must be very extraordinary beings to enjoy such an immunity from even the most shocking and tyrannies 1 violation of the Constitution.

The majority would counsel prudence and comity and admonish to heed the off-limits sign at the Congressional hall, firm in the belief that "if a political fraud has been accomplished, as petitioners ever, the sovereign people, ultimately the offended party, will render the fitting verdict—at the polling precinct."

We are reluctant to wash our hands so easily. We can not remain comfortably seated in the higher tribunal of the land nor reconcile with our conscience by abstaining to give the relief we are duty bound to give to the victims of a political fraud which constitutes a wanton trampling down of the rights and privileges guaranteed by the Constitution. Let us not so easily forget the Rizalian admonition: "Sufferance is not always a virtue; it is crime when it encourages tyrannies." Let us not disguise such kind of resignation under the inoffensive name of judicial prudence. Burke said; "There is also a false, reptile prudence, the result not of caution, but of fear." Fear, as favour should not have place in judicial vocabulary.

XXX.—CONSTITUTIONALISM

The present nuclear physics is a far cry from the more than twenty-five centuries old theory enunciated by Democritus in the following words: "By convention sweet is sweet, by convention bitter is bitter, by contention hot is hot, by convention cold is cold, by convention color is color. But in reality there are atoms and the void. That is, the objects of sense are supposed to be real and it is customary to regard them as such, but in truth they

are not. Only the atoms and the void are real."

The heated controversy between Ptolemy and Copernicus, the discoveries of Galileo and Newton, are just small incidents in the perennial struggle in which man is engaged to be, through science, fully acquainted with the truth about our universe. It takes 1,600 years for one-half of a gram of radium to disintegrate, and it takes one second for light to travel 186,300 miles; formerly matter and energy were essentially different things, but now solid matter is but concentrated energy, and energy has weight; it is not yet answered whether light is wave or a shower of photons, but it is known that it can be weighed. The theory of relativity, opened new vistas in the panorama of science, but new riddles meet man in the great adventure to the unknown. Albert Einstein said:

"Yet new, still more difficult problems arise which have not been definitely settled as yet. We shall mention only some of these unsolved problems. Science is not end will never be a closed book. Every important advance brings new questions. Every development reveals, in the long run, new and deeper difficulties." (The Evolution of Physics, p. 308.)

All-theories which, in their day, served useful scientific purposes, had to give way to others giving better explanations of physical phenomena. The prevailing theories may not resist the onslaught of new intellectual discoveries, but because they may eventually be discarded themselves is no reason to dispense with them when, in the meantime, they are the only ones that can satisfy reason. Otherwise, science will be crippled. Paralysis will keep her from new advances.

By the same token, in the history of law, man had to stick in each epoch to the known as the best of legal institutions. In the millennia of human life no more wonderful legal institution was devised by man than constitutionalism, the evolution of which is one of the most inspiring chapters of history. A mere religious concept, giving voice to moral law, in Israel, a philosophical concept, merely normative, in Greece, it was in republican Rome where it took a definite legal and political force as the basis of jurisdictio as distinguished from gubernaculum, the reason of the law as opposed to the power of government. In England for the common law to prevail over the prerogative of the crown it took several hundred years of bitter struggle. But fate had it that in America is where the evolution of constitutionalism had to reach its highest accomplishment. It became the basis of the government of the United States from its very inception. How constitutionalism for the world is envisaged as the only hope of humanity to attain the goal that will insure juridical order for the world, so that man's inventions, including those ominous on nuclear energy, may be placed under adequate social control.

The hope of the Republic of the Philippines lies also on constitutionalism. Not the one that would merely offer lip service to the Constitution, but that would make of that document as one of the living tissues of our body politic, absolutely indispensable to its own existence.

XXXI.—THE MOST VITAL ISSUE

The validity of the Constitution is the most vital issue involved in this case. If no one must be allowed to be above the law, with greater reason no one should be allowed to ignore or to trample upon the provisions and mandates sacred by all persons living under the pale of the Republic of the Philippines, and not rocked of as an insignificant pushpin to toy with.

Burning with the thirst of immortality, shepherd Erostratus burned the temple of Ephesus to gain a berth in history. Let us not make of the Constitution of the Philippines another temple of Ephesus. It is much better to be buried in the dust of eternal oblivion than to permanently live in the memory of fixture generations as guilty of arson, as rivals of the barbaric hordes who destroyed the great works of art of Greece and Rome, or the contemporary vandals who destroyed without any compunction churches and schools, treasures of noble human

institutions, or other works wherein the loftiest ideals and aspirations of men have blossomed with imperishable grandeur and beauty. Let us spare the Constitution from the deleterious effects of our prejudices and from the ravages of blind passions. Let us keep it as an undying beacon of hope, the indestructible foundation of our national existence, the inexpugnable citadel of the rights and liberties of our people, the eternal rock upon which the Republic of the Philippines shall forever subsist with dignity.

The pamphlet in which it is printed may wizen and shrivel, its paper rived into shreds, the shreds pulverized into dust and ashes, and these reduced into infinitesimal atoms which will finally scatter in the wide universe, to form new substances. But the juridical sense of our people, crystallized in that pamphlet and permeating that paper, embodied in the great document, like the mythological phoenix of Arabia, undergoing the five hundred years cycle of resurrection, shall again and again rise in youthful freshness from the scattered ashes and atoms, the undying symbol of the spirit of the law, the flaming banner of justice, the magnificent expression of the undaunted will-power to live.

The petition must be granted, and the preliminary injunction of May 29, 1946, must be reissued and made perpetual.

BRIONES, M., disidente:

Después de las elecciones generales de 23 de abril, 1946, en que fueron elegidos el Presidente y Vice Presidente de Filipinas y los miembros del Congreso, el Senado y la Cámara de Representantes inauguraron su period de sesiones reuniéndose por primera vez del 25 de mayo. Uno de los primero documentos que se leyeron en el Senado fué la proclama expedida por la Comisión sobre Elecciones cuyo texto íntegro se transcribe a continuación:

CERTIFICATE OF CANVASS BY THE COMMISSION ON ELECTIONS OF RETURNS VOTES FOR THE OFFICE OF SENATOR AND PROCLAMATION OF THE CANDIDATES ELECTED IN THE ELECTION HELD ON APRIL 23, 1946.

We, the undersigned, constituting the Commission on Elections, do hereby certify that, pursuant to the provisions section 11 of Commonwealth Act No. 725, we have made the canvass of the votes cast in the Philippines for the office of Senator in accordance with the statements submitted by the Provincial Birds of Canvassers of the different provinces and the City Board Canvassers of Manila and that the result thereof shows the following sixteen (16) registered candidates to have received the highest number of votes:

Name of candidates

Votes received

1.

Vicente J. Francisco

735,671

2.

Vicente Sotto

717,225

3.

Jose Avelino

708,480

4.

Melencio Arranz

666,700

5.

Ramon Torres

640,477

6.

Tomas Confesor

627,354

7.

Mariano Jesus Cuenco

623,650

8.

Carlos P. Garcia

617,542

9.

Olegario Clarin

611,227

10.

Alejo Mabanag

608,902

11.

Enrique B. Magalona

591,796

12.

Tomas Cabili

589,762

13.

Jose O. Vera

588,993

14.

Ramon Diokno

583,598

15.

Jose S. Romero

563,816

16.

Salipada Pendatum

557,156

"In view of the above result, we hereby proclaim that above named sixteen (16) registered candidates are the duly Senators in the election held on April 23, 1946.

"We further certify that Vicente J. Francisco, Vicente Sotto, Jose Avelino, Melecio Arranz, Ramon Torres, Tomas Confesor, Mariano Jesus Cuenoo and Carlos P. Garcia received the first eight (8) highest number of votes, and that Olegario Clarin, Alejo Mabanag, Enrique B. Magalona, Tomas Cabili, Jose O. Vera, Ramon Diokno, Jose E. Romero and Salipada Pendatum received the next eight (8) highest number of votes.

We further certify that the attached statement of votes shows the number of votes polled by each candidate for the Office of Senator in the Philippines by provinces.

In witness whereof, we have signed these presents in the City of Manila, this 23rd day of May, 1946.

(Sgd.) "JOSE LOPEZ VITO

Chairman

(Sgd.) "FRANCISCO ENAGE

Member

I concur in toto, except as regards the proclamation of the 16 Senators-elect, on the basis of the canvassing of all the votes cast in their favor, without excluding those of Central Luzon. (Separate Opinion prepared):

(Sgd.) "VICENTE DE VERA

"Member"

Acto seguido procedióse a la elección del Presidente del Senado saliendo elegido como tal el candidate del partido de la mayoría Hon. José A. Avelino que obtuvo 10 votos contra el candidate del partido de la minoría Hon. José O. Vera que obtuvo 8. Tanto el Sr. Vera como sus correcurrentes Sres. Diokno y Romero tomaron parte en la votación.

Elegido el Presidente se iba a proceder a la toma del juramento colectivo de los Senadores electos, pero en esto el

Senator Hon. Salipada Pendatun present para su aprobación un proyecto de resolución cuyo texto también se transcribe íntegro a continuación:

“WHEREAS the Commission on Elections, charged under Constitution with the duty of insuring free, orderly, and honest elections in the Philippines, reported to the President of the Philippines on May 23, 1946, that On election day, altho no acts of violence were officially reported to this Commission in connection with the elections, we were advised by our representative in Nueva Ecija that ballot boxes were stolen by armed bands in the barrios of the municipalities of Bongabon, Gapan, Sta. Rosa and Guimba. These incidents are still under investigation by the Military Police Command. After the election we cannot fail to notice the reports published in the newspapers on the attacks that have been, made by armed bands upon persons or groups of persons who were known to have voted for candidates other than the candidates of these armed elements. Even the report submitted to this Commission by the Provost Marshal General on May 20, 1946, * * * contains a recital of incidents of terrorism that occurred in the four provinces of Central Luzon herein above mentioned which disturbed or affected the national election in an undesirable manner. Reports also reached this Commission to the effect that in the provinces of Bulacan, Pampanga, Tarlac and Nueva Ecija, the secrecy of the ballot was actually violated; that armed bands saw to it that their candidates were voted for; and that the great majority of the voters, thus coerced or intimidated, suffered from a paralysis of judgment in the matter of exercising the right of suffrage. Considering all these acts of terrorism, violence and intimidation in connection with elections which are more or less general in the provinces of pampanga, Tarlac, Bulacan and Nueva Ecija, this Commission believes that the election in the provinces aforesaid did not reflect the true and free expression of the popular will. It should be stated, however, that this Commission is without jurisdiction to determine whether or not the votes cast in the said provinces which, according to these reports have been cast under the influence of threats or violence, are valid or invalid. Suffice to state that in accordance with the provisions of Article 1 Section 2, of the Constitution, “The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide—save those involving the right to vote—all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials * * *” and that the question of whether or not a vote has been cast legally or Illegally is not for this Commission to determine. The matter is therefore being brought to the attention of the President and Congress of the Philippines for such action as may be deemed proper pursuant to the requirements of the Constitution that this Commission submit after every election a report to the said offices on the manner the election was conducted.”

WHEREAS, the minority report of the Hon. Vicente de Vera, member of the Commission on Elections, says among other things, that ‘we know that as a result of this chaotic condition, many residents of the four provinces have voluntarily banished themselves from their home towns in order not to be subjected to the prevailing oppression and to avoid being victimized or losing their lives;’ and that after the elections dead bodies had been found with notes attached to their necks, reading: ‘Bumoto kami kay Roxas’ (We voted for Roxas);

“WHEREAS, the same Judge De Vera says in his minority report that in the four provinces of Pampanga, Tarlac, Bulacan and Nueva Ecija, the worst terrorism reigned during and after the elections, and that if the elections held in the aforesaid provinces were annulled as demanded by the circumstances mentioned in the report of the Commission, Jose O. Vera, Ramon Diokno, and Jose Romero, would not and could not have been declared elected;

“WHEREAS, in his report to the Provost Marshal General, Col. Amando Dumlao, Assistant Chief of Staff, G-2, attached to the report of the Commission on Elections, states among other things, that ‘all the members of the Church of Christ (Iglesia ni Cristo) were intimidated and coerced, some kidnapped and murdered’ by the HUKBALAHAPS ‘because they had expressed their opinion that they were going to vote for President-elect Manuel A. Roxas’; that because of terrorism and coercion ‘a great many barrio people have evacuated their

respective places and signified their intention not to vote;" and that ballot boxes were taken away from barrios San Miguel, Pasong Isip, Pakap, Guimba and Galvan, and that in some instances election inspectors were kidnapped;

"WHEREAS, the terrorism resorted to by the lawless elements in the four provinces mentioned above in order to insure the election of the candidates of the Conservative Wing of the Nacionalista Party is of public knowledge and that such terrorism continues to this day; that before the elections Jose O. Vera himself declared as campaign manager of the Osmeña faction that he was sorry if Presidential Candidate Manuel A. Roxas could not campaign in Huk provinces because his life would be endangered; and that because of the constant murders of his candidates and leaders, Presidential Candidate Roxas found it necessary to appeal to American High Commissioner Paul V. McNutt for protection, which appeal American High Commissioner personally referred to President Sergio Osmeña for appropriate action, and the President in turn ordered the Secretary of the Interior to afford the necessary protection, thus impliedly admitting the existence and reign of such terrorism;

"WHEREAS, the Philippines, a Republic State, embracing the principles of democracy, must condemn all acts that seek to defeat the popular will;

"WHEREAS, it is essential, in order to maintain alive the respect for democratic institutions among our people, that no man or group of men be permitted to profit from the results of an election held under coercion, in violation of law, and contrary to the principle of freedom of choice which should underlie all elections under the Constitution;

"WHEREAS, protests against the election of Jose O. Vera, Ramon Diokno, and Jose Romero, have been filed with the Election Tribunal of the Senate of the Philippines on the basis of the findings of the Commission on Elections above-quoted;

"NOW, THEREFORE, be it resolved by the Senate of the Philippines in session assembled, as it hereby resolves, to defer the administration of oath and the sitting of Jose O. Vera, Ramon Diokno, and Jose Romero, pending the hearing and decision on the protests lodged against their elections, wherein the terrorism averred in the report of the Commission on Elections and in the report of the Provost Marshal constitute the ground of said protests and will therefore be the subject of investigation and determination."

Parece que cuando se puso a debate la resolución arriba transcrita, el Senado acordó unánimemente transferir la discusión para la sesión del lunes siguiente, 27 de mayo. Ya se estaba discutiendo otro asunto cuando surgió un acalorado incidente en virtud del cual los Senadores de la minoría salieron todos del salón de sesiones, quedándose allí solamente el Presidente Avelino con sus onces (11) compañeros de la mayoría. Se alega que en esta ocasión, ausentes los Senadores minoritarios y sin el necesario quorum, legal para poder seguir despachando asuntos, los Senadores de la mayoría, revocando el acuerdo anterior de transferencia, decidieron considerar y aprobar la resolución sin más debate.

Tales son, a grandes rasgos, los hechos que han dado lugar a la demanda que directa y originariamente plantean ante este Tribunal Supremo los recurrentes José O. Vera, Ramón Diokno y José E. Romero, y cuya parte petitoria es como sigue:

"POR LO TANTO, los recurrentes respetuosamente piden a este Honorable Tribunal y a cualquier Magistrado del mismo, tenga a bien expedir un interdicto prohibitorio preliminar dirigido a los recurridos, sus funcionarios, empleados, agentes y demás personas que obran en su ayuda, ordenándoles que hasta nueva orden del Tribunal, desistan y se abstengan de poner en ejecución la resolución arriba mencionada, y de impedir a los recurrentes continúen sus asientos en el Senado y ejerzan libremente sus funciones y derechos como senadores de Filipinas, deshaciendo todo lo hecho en contrario hasta esta fecha; que acorte los terminos

de contestación; que una vez contestada esta demanda, designe un Comisionado para recibir las pruebas, con instrucciones de que la haga sin dilaciones, y que, previa la vista correspondiente, dicte sentencia declarando enteramente nula y de ningún valor la citada resolución, y prohibiendo consecuentemente a los recurrentes y a cada uno de ellos a impedir a los recurrentes a continuar en sus asientos en el Senado de Filipinas y a ejercer libremente sus cargos como senadores, y prohibiéndose igualmente a realizar cualquier otro procedimiento ulterior para ejecutar la resolución citada, con las costas. Los recurrentes piden también cualquier otro remedio justo y equitativo."

El magistrado Perfecto concedió el interdicto preliminar pedido principalmente en virtud de la alegación expuesta en el párrafo 10 de la demanda, en el sentido de que la resolución cuestionada tenía por objeto, entre otras cosas, "la realización de fines siniestros, tales como la aprobación, sin la fiscalización e intervención de los recurrentes, del Bill Bell, de una medida de reorganización judicial terrorista para el personal de la judicatura y de otras semejantes, y para doblegar a los recurrentes por tal hitlérico procedimiento a los manejos de tal mayoría". Sometido el interdicto preliminar a la Corte en pleno, ésta lo aprobó en una votación de (6) contra cuatro (4), y al propio tiempo lo señaló a vista para la determinación de la cuestión de si su expedición estaba o no justificada. En dicha vista que duró 6 horas seguidas, desde la mañana hasta la tarde (una de las más largas si no la más larga que se haya celebrado jamás en los anales de esta Corte), arguyeron extensamente tanto la representación de los recurrentes como la de los recurridos. El procurador General Tanada compareció y arguyó en nombre de estos últimos, pero limitándose en su informe a cuestionar e impugnar la jurisdicción de este Supremo Tribunal para conocer y enjuiciar el asunto bajo el principio de la separación de poderes que inorma nuestra Constitución. Puede decirse sin exageración que el tema se agotó discutiéndose con minuciosidad los puntos constitucionales y jurídicos planteados en el asunto. Después de la vista esta Corte en pleno, con la sola ausencia del Magistrado Jaranilla, y con la disidencia del Magistrado Sr. Perfecto, acordó disolver el interdicto prohibitorio preliminar mediante la siguiente orden:

"Considering that the preliminary injunction was issued in the case of Jose O. Vera, et al., petitioners, vs. Jose A. Avelino, et al., respondents, G. R. No. L-543, to preserve the status quo and thus prevent the execution of the acts alleged under oath in the last part of paragraph X of the petition, without the intervention of the petitioners; and taking into consideration that this Court, after hearing both parties, at any rate believes and trusts that the respondents will not carry out said acts during the pendency of this proceeding, this Court, without deciding whether or not the said injunction was justified, hereby resolves to dissolve it in the meantime, without prejudice to whatever action or decision this Court may take or render on the questions involved in this case including that of jurisdiction."

Resulta evidente de autos que las cuestiones que tenemos que considerar y resolver son las siguientes: (1) a la luz de nuestra Constitución y de nuestras leyes ¿es legal y sostenible la resolución objeto de controversia, en cuanto por ella se priva a los recurrentes de sus asientos en el Senado de Filipinas, y de los derechos, privilegios y prerrogativas anejos a dichos asientos?; (2) a la luz de nuestra Constitución y de nuestras leyes ¿tiene este Tribunal Supremo jurisdicción y competencia para conocer, enjuiciar y decidir el asunto?

"Primera cuestión.— A la luz de nuestra Constitución y de nuestras leyes, ¿es legal y sostenible la resolución objeto de controversia, en cuanto por ella se priva a los recurrentes de sus asientos en el Senado de Filipinas, y de los derechos, privilegios y prerrogativas anejos a dichos asientos?

Antes de la aprobación de la primera Constitución del Commonwealth, de Filipinas (1955), la Legislatura era el juez de las elecciones, actas y condiciones de sus propios miembros. La disposición original relativa a esta materia era la contenida en la Ley del Congreso de los Estados Unidos de 1902 (Ley Orgánica, artículo 7, párrafo 5), la cual preceptuaba que "La Asamblea (Filipina) decidirá de las elecciones, su resultado y las calificaciones de los representantes * * *." Cuando se aprobó la Ley del Congreso de 1916 (Ley Jones, de

amplia autonomía, sección 18, párrsfo 1), la citada disposición se reincorporó, con una modificación que la hacía más enfática insertándose la palabra "únicos", a saber: "Que el Senado y la Cámara de Representantes, respectivamente, serán los únicos jueces de las elecciones, del resultado, escrutinio y condiciones de aus miembros electivos * * *." Esta disposición no era de ningún modo original: no hacía más que trasplantar a este país la tradición y el sistema americano provisto en la cláusula 1.[a] de la sección 5 del Artículo I de la Constitución de los Estados Unidos, que dispone que "cada Cámara será juez de las Elecciones, Actas y Condiciones de sus propios miembros * * *."

La Asamblea Constituyente convocada en 1934 para redactar la Constitución de nuestro Commonwealth pudo haber seguido sobre esta materia diferentes cursos de acción: reafirmar la tradición americana vigente en este país desde 1902; o seguir el ejemplo de algunos países—verbigracia, Canada, Australia, Hungría y Polonia—que habían trasladado esta facultad de las Cámaras Legislativas al departamento judicial, hablando más concretamente, al Tribunal Supremo; o bien instituir un sistema mixto, creando un cuerpo constitucional separado e independiente, con jurisdicción exclusiva sobre la materia. La Asamblea Constituyente optó por esto último creando "una Comisión Electoral que se compondrá de tres Magistrados del Tribunal Supremo que serán designados por su presidente, y de seis diputados escogidos por la Asamblea Nacional, tres de los cuales serán designados por el partido que tuviere en ella el mayor número de votos, y tres por el partido que le siga en el mayor número de votos. Esta Comisión Electoral será presidida por el Magistrado más antiguo y conocerá exclusivamente de todas las controversias relativas al resultado de la elección y a las calificaciones de los miembros de la Asamblea Nacional" (Artículo 4, Constitución de Filipinas, 1935). Cuando la Constitución se reformó en 1940 restaurándose la legislatura bicameral, la filosofía de la comisión electoral se respetó y conservó en la Constitución reformada y en lugar de una comisión se crearon dos, una para cada cámara, y ya no se llamaba Comisión Electoral sino Tribunal Electoral, como para recalcar y subrayar el carácter judicial del nuevo organismo. El precepto constitucional pertinente es como sigue;

"SEC. 11. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second, largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."

De lo expuesto resulta evidente que una importante facultad judicial que tenían las cámaras legislativas anteriormente—la facultad de actuar como jueces sobre las elecciones, actas y calificaciones de sus miembros—ha quedado eliminada completamente bajo la actual Constitución y traspasada también completa y plenamente al nuevo organismo constitucional—el Tribunal Electoral. La pregunta ahora en orden es si la resolución cuestionada que para mayor claridad llamaremos Resolución pendatun representa o constituye, por parte de los Senadores recurridos, el ejercicio de una facultad constitucional que no les pertenece sino al Tribunal Electoral, y nuestra contestación es decididamente afirmativa. Con esa resolución en la mano es como si los recurridos hubieran dicho a los recurrentes lo siguiente: "Señores, aquí tenemos un informe de la Comisión sobre Elecciones en donde se dice que en cuatro provincias del centro de Luzón no ha habido sufragio libre, sincero y ordenado, por los actos de intimidación y violencia de vuestros partidarios. Sin los votos de esas provincias, vosotros no habíerais triunfado. Por tanto, hasta que se decidan en vuestro favour las protestas formuladas contra vuestras actas ante el Tribunal Electoral, os negamos el derecho de jurar, de sentarse en estos escaños, de participar en las deliberaciones del Senado y de gozar de los derechos, prerrogativas y privilegios anejos al cargo de Senador." ¿Qué es esto sino una innegable usurpación de la facultad exclusiva que tiene el Tribunal Electoral de ser el único juez de las

controversias relativas a la elección, actas y calificaciones de los miembros de la cámara a que corresponde dicho tribunal?

Se arguye que independientemente de la cuestión electoral cada cámara, para proteger su existencia, su buen nombre y su decoro, tiene el poder inherente de suspender a cualquier miembro suyo; que la Resolución Pendatun se inspiró en estos motivos; que la suspensión de los recurrentes es un acto político que nada tiene que ver con la determinación de sus actas por el Tribunal Electoral, y no se halla sujeto a revisión de parte del departamento judicial por cuestionable que fuera el mismo desde el punto de vista del derecho o de la moral pública; y que, por tanto, no hay tal usurpación de poderes constitucionales, no habiéndose los recurridos entrometido en la esfera de acción del Tribunal Electoral. Sin embargo, no hay más que leer la resolución en cuestión para convencerse de que su entera motivación se deriva de las elecciones de 23 de Abril, dándose en ella por establecido, en virtud del informe de la Comisión sobre Elecciones, que el triunfo de los recurrentes se debió a un estado de terror y violencia en las Provincias de Pampanga, Tarlac, Nueva Ecija, y Bulacán. Los "por cuantos" de la resolución hacen referencia a las supuestas anomalías e irregularidades que viciaron el sufragio en dichas provincias; hacen ciertas afirmaciones de carácter general como la de que Filipinas, a fuer de nación y estado democrático, debe condenar todo acto tendente a derrotar la voluntad popular, y la de que "para mantener vivo entre nosotros el respeto a las instituciones democráticas, a ningún hombre o grupo de hombres se debe permitir que reporten beneficio de los resultados de una elección llevada a cabo bajo coerción"; y al final se dice "Por cuanto, sobre la base de los informes arriba citados de la Comisión sobre Elecciones se han formulado protestas ante el Tribunal Electoral del Senado contra la elección de José O. Vera, Ramón Diokno y José E. Romero"; y luego la parte dispositiva en virtud de la cual se priva a los recurrentes del juramento y de sus asientos en el Senado entre tanto no se resuelvan las protestas formuladas contra sus actos, interregno que puede durar meses y hasta años. De todo esto resulta bien claro que los considerandos de la resolución versan precisamente sobre los mismos hechos electorales cuya determinación incumbe exclusivamente al Tribunal Electoral, y que la interdicción, o mejor dicho, la suspensión de los derechos, prerrogativas y privilegios de los recurrentes se basa indudablemente en tales considerandos. No hay en la resolución ni la más mínima insinuación de que se haya aprobado por altos motivos de dignidad y decoro senatorial—eso que algún tratadista llama gráficamente medida de profilaxis—como para evitar el roce deshonroso con miembros que fueran algo así como de la casta despreciable de los intocables, aquejados de lepra moral en sus personas. No hay ni el menor cargo de torpeza moral contra los recurrentes, ni siquiera se insinúa que éstos fueron directa o indirectamente responsables del alegado estado de terror y violencia. La conclusión indeclinable, pues, es que la resolución Pendatun enjuicia y resuelve cuestiones o "issues" puramente electorales, aceptando prima facie un informe incompetente sobre terrorismo, violencias y fraudes, y como tal constituye una intromisión en la facultad que bajo la Constitución tiene el Tribunal Electoral del Senado de ser el único juez de las controversias relativas a la elección, actas y calificaciones de los miembros de dicho alto cuerpo colegislador.

Pero admitamos por un momento que la resolución pendatun tiene ese carácter profiláctico que le atribuyen a última hora; que, contra lo que es evidente y claro con claridad meridiana, esa resolución nada tiene que ver con la determinación judicial de las actas de los recurrentes por el Tribunal Electoral. La pregunta otra vez en orden es la siguiente: sometida la Resolución Pendatun a la piedra de toque de nuestra Constitución ¿puede resistir con éxito la prueba? Nuestra contestación es terminantemente negativa. La Constitución filipina es el producto de la sabiduría, experiencia y genio político de nuestro pueblo. No es un documento enteramente original: en ciencia política las concepciones originales no abundan. Hemos volcado en ella no sólo el resultado de nuestra experiencia necesariamente limitada, sino lo que hemos aprendido de la sabiduría y experiencia de otros pueblos más avanzados que nosotros, particularmente del pueblo Americano, con el cual nos ha ligado una convivencia de cerca de medio siglo. Después de largas y laboriosas deliberaciones nuestra Asamblea Constituyente, elegida por

el pueblo (1934-1935), adoptó el sistema presidencial de gobierno dividido en tres altos poderes, independientes entre sí pero coordinados en un mecanismo cuidadosamente elaborado de frenos y contrapesos. Esos poderes son: legislativo, ejecutivo y Judicial. Sus altas facultades y funciones se hallan especificadas en la Constitución, en capítulos separados. En el uso del lenguaje se ha evitado la minuciosidad, el pormenorismo característico de las leyes ordinarias, a fin de hacer del instrumento suficientemente amplio y flexible para acomodarse y para subvenir a las necesidades y condiciones cambiantes de los tiempos; pero, con todo, los trazos, los lineamientos son suficientemente claros, firmes y seguros, y creemos puede decirse sin inmodestia que en concisión, en claridad y en buen ordenamiento nuestra Constitución no cede a ninguna de las constituciones escritas que se conocen.

Examinemos ahora el departamento o poder legislativo que es lo que nos concierne e interesa en el presente asunto. Es un principio constitucional bien establecido que el poder de legislar es ilimitado en tanto en cuanto no pugna con la Constitución, la cual opera como una limitación. Todos los demás poderes y facultades que no tengan carácter legislativo deben ser conferidos expresa o implícitamente. Nuestro Congreso, actuando concurrentemente por medio de sus dos cámaras, tiene el poder de legislar. “El poder legislativo queda investido en un Congreso de Filipinas, compuesto de un Senado y de una Cámara de Representantes (Artículo VI, sección 1, Constitución de Filipinas, 1940). Pero además de este poder de conjunto, cada cámara tiene ciertas facultades, entre ellas algunas de carácter disciplinario, a saber: (a) la de compeler la asistencia de miembros ausentes en la forma y bajo las penas que dicha cámara prescriba; (b) la de castigar a sus miembros por conducta desordenada, y, con la concurrencia de dos terceras partes de sus miembros, expulsar a un miembro por tal motivo (Artículo VI, sección 10, ap. 2 y 3). Fuera de estas facultades no hay en nuestra Constitución ninguna otra que autorice la imposición de un castigo o pena, o envuelva una privación de derechos, prerrogativas y privilegios, siquiera temporal, tal como la que se provee en la Resolución Pendatun. ¿Encaja esta resolución en cualquiera de las facultades arriba enumeradas? Evidentemente que no. No encaja en el inciso (a)—la facultad de compeler disciplinariamente la asistencia de miembros ausentes—porque es superfluo decir que no se trata ni remotamente de tal caso. Tampoco encaja en el inciso “b” porque se ha admitido desde el comienzo que el caso que nos ocupa no es el de conducta desordenada de un miembro. Tampoco encaja en la facultad de determinar y resolver la legalidad y solvencia de las actas y credenciales de los recurrentes porque ya hemos demostrado hasta la saciedad que habiéndose retrado totalmente de las cámaras la substancia, la esencia de esa facultad trasladándola al Tribunal Electoral, quedó también ipso facto retirada y eliminada la facultad de suspender que es nada más que un incidente, un aldeaño de la substancia.

Pero se dice: el Tribunal Electoral no tiene la facultad de suspender, esto se halla admitido por todo el mundo; luego esa facultad ha quedado, por lo menos, en las cámaras como residuo no afectado por el traspaso de jurisdicción sobre las credenciales y actas electorales. Sin embargo, esto no es más que una hábil sutileza. En la Constitución no hay más que dos categorías de poderes: el expreso o el implícito (either by express grant or by fair implication from what is granted). Como quiera que esa reserva, ese residuo (la facultad de suspender) no está conferido expresamente en la Constitución, luego hay que suponerlo implícito. Pero ¿implícito de qué? Tiene que ser de algo, de un poder más general y más amplio expresamente conferido (parte de un todo) que en este caso tendría que ser el poder de conocer y resolver las controversias electorales sobre las actas de los miembros del Congreso. Es así que este poder ya no lo tienen las cámaras bajo la Constitución; luego tampoco queda nada implícito, en alias, so pena de sostener que lo implícito, que es nada más que un incidente, puede subsistir por sí solo sin la substancia—el vaso esencial que lo envuelve y entraña. El corolario forzoso de todo esto es que es redactors de la Constitución filipina eliminaron por completo la facultad de suspender no sólo del Congreso sino del Tribunal Electoral; que la voluntad soberana del pueblo expresada en el código fundamental, es que ningún protestado sería privado de su asiento ni por un solo minuto; que ninguna presunción se establecería en contra de la legitimidad y solvencia de su acta; que solamente una sentencia final podría cerrarle las puertas del Congreso.

No tenemos porque averiguar si con esta decisión la Asamblea Constituyente quiso erigir un firme valladar a los excesos y demasías de la pasión política creando un clima propicio para el desarrollo de las minorías en un país en que, como el nuestro, ciertas causas y circunstancias han retardado el turno periódico y saludable de los partidos; todo lo que nos incumbe hacer es señalar y destacar el hecho inexorable, la volición constitucional. Se han citado dos casos de nuestra jurisprudencia parlamentaria para justificar la Resolución Pendatun: el caso de Jose Fuentebella en el Senado de Filipinas, en 1916, y el caso de Nicolas Rafóls en la Cámara de Representantes, en 1925. Bajo la alegación de haberse cometido graves irregularidades y fraudes en las primeras elecciones senatoriales celebradas en el 6.^o distrito (provincias bicolanas) al candidato electo José Fuentebella se le negó prima facie el juramento y el asiento pendiente la resolución de la protesta formulada contra su acta. Lo mismo se hizo en el caso de Nicola's Rafóls, por alegados fraudes electorales cometidos en el 6.^o distrito diputacional de Cebe. Pero la endeblez e inaplicabilidad de estos precedentes salta inmediatamente a la vista si se tiene en cuenta que cuando se establecieron las cámaras legislativas eran constitucionalmente los únicos jueces de la elección, actas y calificaciones de sus miembros; así que la suspensión prima facie del juramento y del asiento no fué más que un incidente en el ejercicio de esa facultad; y, prescindiendo de si esto era justo o injusto, prudente o arbitrario, parecía incuestionable que estaba dentro de los poderes y facultades de las cámaras el hacerlo.

Pero, en realidad, los casos de Fuentebella y Rafóls pueden citarse para un efecto completamente opuesto al perseguido por los abogados de los recurridos cuando se analizan y discuten amplia y objetivamente los motivos, circunstancias y designios que indujeron a nuestra Asamblea Constituyente a abandonar la bien arraigada tradición americana de hacer de las cámaras legislativas los únicos jueces de la elección, actas y calificaciones de sus miembros, trasladando la jurisdicción a un organismo constitucional completamente separado e independiente. Un análisis de este género viene a ser altamente revelador y expresivo. Lo primero que embarga la atención del observador es que cuando se adoptó esta reforma fundamental y original por la Asamblea constituyente dominaba en Filipinas un partido político fuerte, denso, acaudillado por una personalidad genial, brillante, dinámica y poderosa. Ese partido acababa de ganar en unas elecciones apasionadísimas y muy reñidas una victoria espectacular, abrumadora, que le daba el dominio y control de todos los resortes de la vida política no sólo en la nación sino hasta en las provincias y municipios. Ese partido dominaba naturalmente también la Convención Constitucional, la Asamblea Constituyente. ¿Qué hizo ese partido en medio de su omnipotencia? ¿Le emborrachó ese peligroso licor de los dioses—el licor de la victoria, el licor del poder? No. Ese partido, sus caudillos, resolvieron ser generosos, ser justos, ser prudentes, ser democráticos, y lo fueron; determinaron pensar en términos de humanidad, en términos de nación, en términos de justicia pero justicia de verdad, en términos de libertad y democracia, y lo hicieron tal como lo pensaron. Podían haber escrito una constitución a su talante—una constitución que sirviese sus propios fines, que asegurase su perpetuidad en el poder. No lo hicieron. Y no solamente no lo hicieron, sino que hicieron algo más; algo extraordinario, inconcebible, juzgado a la luz y según la norma usual del egoísmo de los partidos. Teniendo en sus manos un poder enorme, formidable, sumamente tentador, el poder de resolver las controversias electorales sobre las actas de los miembros de la Legislatura, renunciaron a ese poder para alojarlo en un cuerpo constitucional separado e independiente, el cual es prácticamente un tribunal de justicia: la Comisión electoral, hoy Tribunal Electoral. La determinación de hacer este cuerpo lo más apolítico posible se denota en el hecho de que sus miembros legislativos están distribuidos en igual número, 3-3, de suerte que los 3 Magistrados componen el factor decisivo.

¿Por que los redactores de la Constitución, y, sobre todo, por qué el partido político mayoritario pudo hacer esta renuncia de la que pocos ejemplos hay en la historia política del mundo? No parece difícil imaginarse los motivos, las causas, sobre todo para uno que como el autor de esta opinión tuvo algo que ver, siquiera muy modestamente, con las tareas de la Asamblea Constituyente. El pueblo filipino estaba empenado en una suprema, altísima tarea—la de estructurar el Estado, la de escribir el código fundamental de la nación no sólo para los 10

años del Commonwealth sino para la República que se proclamaría después de dicho período de tiempo. Todo el mundo sabía que la suerte de la democracia en Filipinas dependía principalmente de la Constitución que se escribiera, no sólo en su letra sino en su espíritu, y, sobre todo, de la forma y manera como ella moldearía, penetraría e influiría en la vida cotidiana del pueblo y del individuo. Desde luego no éramos unos ilusos, utopistas, perfeccionistas; no aspirábamos ni mucho menos a crear un trasunto de la república ideal de Platón; pero deseábamos hacer lo mejor posible dadas nuestras circunstancias y limitaciones, dado nuestra historia y tradiciones, y dado el temperamento y genio político y social de nuestro pueblo, se había acunado y popularizado por aquel tiempo la frase "justicia política" para denotar la clase de justicia convencional que cabía esperar en relación con las protestas electorales planteadas ante las cámaras legislativas. No sólo se aceleraba o demoraba el despacho de las mismas a ritmo con los dictados de ciertas conveniencias de taifa o grupo, sino que no pocas veces el complajo político o personal era el factor determinante en las resoluciones y decisiones que se tomaban. Todo esto lo sabían los delegados a la asamblea constituyente, lo sabían los líderes de los partidos, lo sabían los escritores y pensadores dedicados al estudio de las ciencias políticas y sociales.

En la Convención había delegados que eran miembros actuales y pasados de la Legislatura, hombres que sabían por propia experiencia cómo se resolvían las protestas electorales en las cámaras legislativas y que, además, sabían por sus lecturas lo que sobre el particular ocurría en otros países. Allí estaba, como delegado, Nicola's Rafóls—actor del drama político que determinó uno de los precedentes parlamentarios que se citan—acaso rumiando todavía en su fuero interno el agravio contra lo que reputara arbitrariedad cometida por la mayoría en su caso. ¿Qué de extraño había que en medio de tal "background", en medio de tal ambiente ideológico se formara una fuerte opinión en favor de un cambio de sistema, en favour de un arbitrio constitucional que sustituyera la llamada "justicia política" con una justicia de verdad, una "justicia judicial"? Así se creó la Comisión Electoral. Nada mejor que las siguientes palabras del malogrado Magistrado Abad Santos en su luminosa opinión concurrente en el celebrado asunto de Angara contra, Comisión Electoral, para definir el carácter del sistema: "El objeto que se trataba de obtener con la creación de la Comisión Electoral no era crear un cuerpo que estuviera por encima de la ley, sino el elevar las elecciones legislativas de la categoría de cuestiones políticas a la de justiciables." (Angara contra Comisión Electoral, 63 Jur. Fil. 151, 200). Y el ponente en dicho asunto el Magistrado Laurel se expresaba más todavía con los siguientes pronunciamientos que no tienen desperdicio;

"Los miembros de la Convención Constitucional que planearon nuestra ley fundamental eran, en su mayor parte, hombres de edad madura y de experiencia. A buen seguro muchos de ellos estaban familiarizados con la historia y desarrollo político de otros países del mundo. Por tanto, cuando creyeron conveniente crear una Comisión Electoral como un organismo constitucional y lo invistieron con la exclusiva función de conocer y fallar las controversias electorales, actas y condiciones de los miembros de la Asamblea Nacional, debieron de haberlo hecho así, no solamente a la luz de su propia experiencia, sino también teniendo en cuenta la experiencia de otros pueblos ilustrados del mundo. La creación de la Comisión Electoral fue, planeada para remediar ciertos males que conocían los autores de nuestra Constitución. No obstante la tenaz oposición de algunos miembros de la Convención a su creación, el proyecto como antes se ha dicho, fue aprobado por ese cuerpo mediante una votación de 98 contra 58. Todo cuando se puede decir ahora sobre la aprobación de la Constitución, la creación de la Comisión Electoral es la expresión de la sabiduría y la justicia esencial al pueblo". (Abraham Lincoln, First Inaugural Address, Marzo 4, 1861.)

"De las deliberaciones de nuestra Convención Constitucional resulta evidente que el objeto era traspasar en su totalidad toda la facultad previamente ejercitada por la Legislatura en asuntos pertenecientes a protestas electorales de sus miembros, a un tribunal independiente e imparcial. Sin embargo, no fue tanto el conocimiento y apreciación de precedentes constitucionales contemporáneos como la larga sentida necesidad de fallar protestas legislativas, libres de prejuicios partidistas lo que impulsó al pueblo, obrando por medio de sus delegados a la Convención, a establecer este Cuerpo que se conoce por Comisión Electoral. Con

estas miras, se creó un cuerpo en el que tanto el partido de la mayoría como el de la minoría están igualmente representados para contrarrestar la influencia partidista en sus deliberaciones, y dotado, además, de carácter judicial mediante la inclusión entre sus miembros de tres magistrados del Tribunal Supremo.

"La Comisión Electoral es una creación constitucional, investida de las facultades necesarias para el cumplimiento y ejecución de las funciones limitadas y específicas que la ha asignado la Comisión. Aunque no es un Poder en nuestro Gobierno tripartito, es, para todos los fines, cuando obra dentro de los límites de su autoridad, un organismo independiente. Se aproxima más, ciertamente, al Departamento Legislativo que a cualquiera otro. El lugar que ocupa la disposición legal (artículo 4) que crea la Comisión electoral en el Título VI, titulado 'Departamento legislativo' de nuestra Constitución, es muy significativo. Su composición es también significativa por cuanto está constituida por una mayoría de miembros de la legislatura. Pero es un cuerpo separado e independiente de la Legislatura.

"La concesión de facultades a la Comisión Electoral para conocer de todas las controversias relativas a las elecciones, actas y condiciones de los miembros de la Asamblea Nacional, tiene por objeto hacer que esas facultades sean tan completas y queden tan incólumes como si hubieran continuado originalmente en la Legislatura. El haber expresamente investido de esas facultades a la Comisión Electoral, es una negativa tácita del ejercicio de esas facultades por la Asamblea Nacional. Y esto es una restricción tan eficaz a las facultades legislativas como una prohibición expresa contenida en la Constitución (Ex parte Lewis, 45 Tex. Crim. Rep., 1; State vs. Whisman, 36 S. D., 260; L. R. A., 1917B, 1). * * *" (Angara contra Comisión Electoral, 63 Jur. Fil., pp. 151, 188-190.)

Acaso se pueda decir algo más todavía acerca de los motivos que indujeron la creación de la Comisión Electoral; acaso se pueda aventurar la afirmación de que con este cuerpo los redactores de la Constitución, los caudillos de los partidos se propusieron asegurar por todos los medios y garantías la vida y crecimiento de la democracia en Filipinas. Democracia es esencialmente libre discusión de los asuntos públicos, de los problemas de la comunidad; libre expresión del pensamiento y de la opinión. De esto se sigue necesariamente un régimen basado en la existencia de una mayoría que gobierna y de una minoría que aspira a gobernar entretanto que vigila los actos del gobierno en su doble papel de censor y de aspirante al poder. La mejor piedra de toque para apreciar y juzgar la calidad de un régimen político es la manera y forma cómo trata a las minorías y oposiciones. Un gobierno totalitario, despótico, las liquida, las ahoga; un gobierno democrático no sólo las respeta, sino que crea para ellas un clima vital propicio. Mirado en este sentido el Tribunal Electoral es un instrumento de minorías por antonomasia: la idea básica de su creación es el desposeer a las mayorías del poder de destruir, de aniquilar a las minorías mediante lo que cinicamente se ha denominado "justicia política", e impartir a las minorías las máximas garantías de una justicia de verdad—una "justicia judicial". El delegado Vicente J. Francisco, ahora "Floor-Leader" de la mayoría en el Senado, pronunciando su discurso a favor de la reforma en la Asamblea Constituyente, dijo entre otros conceptos las siguientes significativas palabras: "Many have criticized, many have complained against the tyranny of the majority in electoral cases * * *" (Aruego, *The Framing of the Philippine Constitution*, tomo I, pág. 263). Por eso es un absurdo sostener que la facultad de suspender utilizada mediante la Resolución Pendatun haya quedado en el Congreso como residuo, independientemente de la jurisdicción exclusiva del Tribunal Electoral para resolver protestas electorales legislativas. Ello equivaldría a sostener que los redactores de la Constitución pusieron un remedio para derrotarlo al propio tiempo mediante una puerta reservada y trasera por la que podría escurrirse el pequeño monstruo de la "justicia política". Este juego infantil no podían haberlo hecho los redactores de la Constitución, los líderes de los partidos que tuvieron alguna responsabilidad en la redacción de dicho documento. ¿Qué más? Esa facultad para suspender equivale prácticamente a una carta blanca para intervenir y ostarbar las actuaciones y procedimientos del Tribunal Electoral, provocando suspicacias, creando anticipadamente prejuicios no sólo en la mente del público sino de los miembros mismos, empuñando, en una palabra, el prestigio del tribunal. ¿Cómo se puede pensar que la Asamblea Constituyente permitiera y

posibilitara ese resultado antijudicial, reservando algo al Congreso en un traspaso de facultades que se consideraba total, absoluto e inocondicional? Los tribunales ordinarios de justicia están por ley protegidos contra todo estorbo y obstrucción a sus funciones. El Tribunal Electoral—criatura de la misma Constitución—tiene, por lo menos, iguales si no mejores títulos a esa impermeabilidad, mejor todavía, a esa inmunidad contra toda obstrucción y entorpecimiento. El hecho de que la intromisión venga del Congreso o de una de sus cámaras no puede ser una justificación.

Las deliberaciones de la Asamblea Constituyente arrojan buena luz sobre el espíritu del precepto que nos ocupa. Que el traspaso de facultades fue total, absoluto; que al Congreso no se reservó ninguna facultad, mucho menos la de suspender, en toda cuestión relativa a la elección de sus miembros, lo denotan bien claro ciertas observaciones, que a estas alturas resultan proféticas, del Delegado Manuel Roxas, uno de los líderes más autorizados de la Asamblea Constituyente, hoy primer Magistrado de la nación. El Sr. Roxas estaba contestando varias interpelaciones sobre el alcance del nuevo proyecto. Replicando al Delegado Ventura no parece sino que el Sr. Roxas presintiera la Resolución Pendatun o actos semejantes a ella cuando dijo lo siguiente; “* * * Además, si la Asamblea desea anular el poder de la Comisión (Electoral), puede hacerlo así mediante ciertas maniobras en su primera sesión cuando se someten las actas a la Asamblea. El objeto es dar a la Comisión Electoral todo el poder ejercitado por la Asamblea referente a las elecciones, actas y condiciones de sus miembros” (véase Angara contra Comisión electoral, supra. pag. 179). Ese todo de que habla el Sr. Roxas excluye la idea de cualquier reserva o residuo dejado a las cámaras del Congreso.

Se dice, sin embargo, en la opinión de la mayoría que los debates en la Asamblea Constituyente sobre el precepto constitucional de que se trata demuestran que la intención de los redactores de la Constitución no fue el entregar todo a la Comisión electoral (ahora Tribunal Electoral), sino que se le confirió solamente la facultad de ser “the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly.” Es decir—se arguye—que cuando no hay “contest” o contención las cámaras tienen la facultad de entender y juzgar de “la elección, actas y cualificaciones de sus miembros”. Esto se desprende, según la ponencia, del hecho de que mientras el “draft” o proyecto original decía lo siguiente:

“The elections, returns and qualifications of the Members of the National Assembly and all cases contesting the election of any of its members shall be judged by an Electoral Commission

la redacción final del proyecto quedó como sigue:

* * * * *

“The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.”

Se asevera enfáticamente en la opinión de la mayoría que la supresión de la primera parte de la cláusula es harto significativa. Ello demuestra, se dice, que la cláusula tenía dos partes con significados distintos: la primera parte, relativa a casos no contenciosos, y la segunda referente a casos contenciosos. La eliminación de la primera parte venía a reducir consiguientemente la jurisdicción de la Comisión Electoral a los casos contenciosos, reservándose los no contenciosos a las cámaras. Y para probar esta tesis a primera vista deslumbrante se transcribe en la ponencia una larga tirada del diario de sesiones de la Asamblea Constituyente—tirada que, en verdad, ofrece ciertos equívocos y ambigüedades. Pero esto no es más que un aspecto del cuadro.

Esto nos obliga a revisar y examinar toda la parte del diario de sesiones que abarca los debates sobre el particular. Afortunadamente, las discusiones fueron amplias, plenas de información y detalle, y sobre todo llevadas muy inteligentemente. El Delegado Manuel Roxas, ahora presidente de Filipinas, era quien sostenía el lado afirmativo, esto es, el precepto original tal como lo había sometido el llamado Comité de Siete y tal como queda transcrito en

el párrafo anterior. Un grupo de Delegados, encabezado por el Hon. Alejo Labrador, de Zambales, estaba fundamental y decididamente opuesto a la fórmula. Estos Delegados no aceptaban la reforma propuesta, querían que se conservase el antiguo sistema por virtud del cual las cámaras eran los jueces exclusivos de la elección, actas y cualificaciones de sus miembros. Acaso sea pertinente consignar el hecho de que si bien es verdad que los partidos (anti y pro) habían declarado una tregua patriótica y saludable en sus luchas dentro de la Convención, el Sr. Roxas pertenecía al partido—el de los pros—mientras que el Sr. Labrador era de la mayoría, el partido fuerte y poderoso de los antis cuyo indiscutible líder era el entonces Presidente del Senado Sr. Quezon. La oposición del Sr. Labrador y compañeros se fundaba principalmente en la teoría de la separación de poderes: ellos creían que la reforma era demasiado radical, que la misma venía a mermar grandemente el poder y prestigio del departamento legislativo, reduciéndolo a un estado de inferioridad y vasallaje, particularmente al poder judicial, en virtud de la intervención de miembros de la Corte Suprema en la composición de la Comisión o Tribunal Electoral. Acaso sea pertinente decir también que entre los ardientes patrocinadores de la reforma figuraban distinguidos Delegados de la mayoría entre ellos el Hon. Vicente J. Francisco, de Cavite, en la actualidad Senador de Filipinas.

Veamos ahora el proceso de cómo se enmendó el "draft" original del precepto. Las siguientes interpelaciones arrojan copiosa luz sobre la cuestión.

"Delegate VENTURA. We have a doubt here as to the scope of the meaning of the first four lines, paragraph 6, page 11 of the draft reading: 'The elections, returns and qualifications of the Members of the National Assembly and all cases contesting the election of any of its Members shall be judged by an Electoral Commission * * *.' I should like to ask from the gentleman from Capiz whether the election and qualification of the Members whose election is not contested shall also be judged by the Electoral Commission.

"Delegate ROXAS. If there is no question about the election of the Member, there is nothing to be judged; that is why the word "judge" is used to indicate a controversy. If there is, no question about the election of a Member, there is nothing to be submitted to the Electoral Commission and there is nothing to be determined.

"Delegate VENTURA. But does that carry the idea also that the Electoral Commission shall confirm also the election of those whose election is not contested?

"Delegate ROXAS: There is no need of confirmation. As the gentleman knows, the action of the House of Representatives in confirming the election of its Members is just a matter of the rules of the Assembly. It is act constitutional. It is not necessary. After a man (advértase bien esto) files his credentials that he has been elected, that is sufficient, unless the election is contested. (Arruego, *The Framing of the Philippine Constitution*, pp. 267, 268.)

Como se ve, lo que lo preocupaba al Delegado Ventura era que con la fraseología indicada la Comisión Electoral tuviera jurisdicción y competencia hasta sobre las credenciales no protestadas; parece que se temía esta ambigüedad. Pero ni el Delegado Ventura ni nadie en la Convención tuvo jamás en la mente la idea de que la fraseología envolvía una dual jurisdicción: una, de parte de la Asamblea Nacional, sobre las credenciales no protestadas; y otra, de parte de la Comisión Electoral, sobre las credenciales protestadas. Y el Delegado Roxas, con sus contestaciones, estableció bien claramente que la cláusula, tal como estaba redactada, presuponía necesariamente un "contest", una controversia, así que se empleaba la palabra "judge"; y el "contest", el litigio tenía que ser enjuiciado naturalmente por la Comisión Electoral.

De la última contestación del Delegado Roxas transcrita arriba se deduce incuestionablemente que él no admitía la posibilidad de que la Asamblea Nacional rehusase su confirmación a una credencial no protestada o contendida. El sostenía que esta confirmación no era constitucional, no era necesaria. Por eso él dijo categóricamente; "After a man files his credential, that is sufficient, unless the election is contested." Aplicado este criterio al caso que nos

ocupa, equivale a lo siguiente; Después de haberse presentado al Senado las credenciales de los recurrentes ares, vera, Diokno y Romero (a ello monta el certificado de proclamación expedido por la Comisión sobre Elecciones), ello era bastante, a menos que su elección iuese cuestionada, y cuestionada legalmente, esto es, protestada debidamente ante el Tribunal Electoral.

El pensamiento del Delegado Roxas se aclaró más contestando otras interpelaciones. ?l dijo positiva y terminantemente, replicando al Delegado Cinco, que no habia ninguna diferencia entre la primera y segunda parte de la cláusula que, en realidad, los casos de elecciones contendidas ya estan incluídos en la frase "the elections, returns and qualifications", y que la frase "and contested elections" se insertó meramente para los efectos de mayor claridad.

* * * * *

"Delegate CINCO. Mr. President, I have a similar question as that propounded by the gentleman from Ilocos Norte (Mr. Ventura) when I arose a while ago. However, I want to ask more questions from the Delegate from uapiz. This paragraph 6 on page 11 of the draft cites cases contesting the election as separated from the first part of the section which refers to elections, returns and qualifications.

"Delegate ROXAS. That is merely for the sake of clarity. In fact the cases of contested elections are already included in the phrase the elections, returns and qualifications.' This phrase 'and contested elections' was inserted merely for the sake of clarity.

"Delegate CINCO. Under this paragraph, may not the electoral commission, at its own instance, refuse to confirm the election of the members?

"Delegate ROXAS. I do not think so unless there is a protest." (Aruego, id., p. 269.)

Pero hay todavía una cosa más importante. En realidad, esta misma cuestión que nos ocupa ya se planteó en aquellos debates y la solución que entonces se le dió cuadra perfectamente con el criterio que sostenemos en esta disidencia. El Delegado Labrador, lider, como ya se ha dicho, de los opositores a la reforma, hizo al Delegado Roxas algunas interpelaciones que parecian hechas en anticipación a los presentes acontecimientos. He aquí el dialogo Roxas-Labrador:

"Delegate LABRADOR. Does not the gentleman from Capiz believe that unless this power is granted to the Assembly, the Assembly on its own motion does not have the right to contest the election and qualification of its member?

"Delegate ROXAS. I have no doubt that the gentleman is right. If this draft is retained, as it is, even if two-thirds of the Assembly believe that a member has not the qualifications provided by law, they cannot remove him for that reason.

"Delegate LABRADOR. So that the right to remove shall only be retained by the Electoral Commission.

"Delegate ROXAS. By the Assembly for misconduct.

"Delegate LABRADOR. I mean with respect to the qualifications of the members.

"Delegate ROXAS. Yes, by the Electoral Commission.

"Delegate LABRADOR. So that under this draft, no member of the Assembly has the right to question the eligibility of its members?

"Delegate ROXAS. Before a member can question the eligibility, he must go to the Electoral Commission and make the question heard before the Electoral Commission.

"Delegate LABRADOR. So that the Electoral Commission shall decide whether the election is contested or not contested.

"Delegate ROXAS. Yes, sir; that is the purpose. (Aruego, idem, pp. 269, 270.)

Este diálogo Roxas-Labrador nos da la mejor clave para interpretar el precepto. Labrador preguntó si bajo el mismo la Asamblea tenía derecho a cuestionar, de su propia iniciativa (on its motion), la elección y cualificación de sus miembros; Roxas contestó que no, que "aunque dos terceras partes de la Asamblea creyeran que un miembro no tenía las cualificaciones provistas por la ley, ellos no podrían removerle por tal razón".

Labrador volvió a preguntar inquiriendo sobre quién tenía el derecho de remover. Roxas contestó: la Asamblea Nacional por mala conducta (for misconduct); y la Comisión Electoral, con respecto a las cualificaciones de los miembros de la Asamblea.

Y cuando Labrador volvió a remachar preguntando si un miembro de la Asamblea Nacional podría, bajo el precepto que se discutía, cuestionar la elegibilidad de sus miembros, Roxas contestó categóricamente que "antes de que un miembro pudiera cuestionar la elegibilidad (de otro) debía ir a la Comisión Electoral y hacer que la cuestión se oyera ante la Comisión Electoral." Es decir que, aplicado este criterio al caso que nos ocupa, ni el Senador pendatun, ni ningún otro Senador, ni nadie tenía derecho a cuestionar la elegibilidad de los recurrentes Sres. Vera, Diokno y Romero ante el Senado, sino que el asunto debía llevarse directamente al Tribunal Electoral, y hacer que este lo enjuiciara.

Pero se preguntará: ¿entonces por qué se reformó el "draft" o proyecto original eliminando la primera cláusula y dejando sólo la segunda, o sea la frase "all cases contesting the elections, returns and qualifications", etc. etc.? Es verdad, se hizo la enmienda, pero la misma no es sustancial, no afecta al fondo del precepto, no involucra el espíritu del sistema tal como lo definió y explicó el Delegado Roxas en sus luminosas respuestas a las diversas interpelaciones, particularmente las dadas al Delegado Labrador. Se aceptó la enmienda más bien por razones puramente psicológicas, esas que conoce bien todo aquél que esté familiarizado con la mecánica de los parlamentos y asambleas deliberativas. Por un lado, el Delegado Roxas veía que había ciertas dudas con respecto al alcance del proyecto tal como estaba fraseado; pero, por otro lado, él decía que esas dudas carecían de fundamento, que las dos cláusulas del precepto tenían un mismo significado, que la segunda ya estaba contenida en la primera y se insertaba tan sólo para fines de claridad. Así que, hábil estratega parlamentario, creyó que podía aceptar perfectamente la enmienda, entre cuyos proponentes (esto es muy significativo, como se verá más adelante) figuraba por cierto el Delegado Rafols, pues con ello no perdía nada, no comprometía ni un ápice de su posición, y en cambio ganaba mucho, atraía el apoyo de los indecisos, aseguraba la aprobación del precepto en la votación final, derrotando a los que estaban fundamentalmente opuestos al mismo como, en efecto, los derrotó por 98 votos contra 56. Que la enmienda no era sustancial y de ningún modo afectaba al sistema, así lo declaró categóricamente el Sr. Roxas cuando, defiriendo a una sugerencia del Presidente Recto de la Convención, definió el alcance del cambio diciendo que era "tan sólo para obviar la objeción apuntada por varios delegados en el sentido de que la primera cláusula del 'draft' que dice 'The election, returns and qualifications of the members of the National Assembly' parece dar a la Comisión Electoral el poder de determinar hasta la elección de los miembros que no han sido protestados." Es decir, que lo único que se quiso aclarar y establecer fuera de toda duda con la enmienda es que el poder de la Comisión Electoral no podía extenderse a las credenciales no protestadas, pero jamás se pensó que el efecto de la enmienda era el desgajar este poder de la Comisión Electoral para dejarlo como un residuo en la Legislatura; en otros términos, jamás se imaginó que con la enmienda la Asamblea Nacional todavía podría ser juez de las credenciales no protestadas de sus miembros. He aquí las palabras textuales del Sr. Roxas:

"The difference, Mr. President, consists only in obviating the objection pointed out by various delegates to the

effect that the first clause which states 'The election, returns and qualifications of the members of the National Assembly' seems to give to the Electoral Commission the power to determine also the election of the members who have not been elected. And in order to obviate, we believe that the amendment is right in that sense * * * that is, if we amend the draft so that it should read as follows: 'All cases contesting the election, etc.,' so that the judges of the Electoral Commission will limit themselves only to cases in which there has been a protest against the returns."

No pudo haberse concebido jamás la peregrina, fantástica idea de que el "draft" enmendado dejaba a la Asamblea Nacional la facultad de enjuiciar la "elección, actas y cualificaciones de los miembros" contra los cuales no existiera ninguna protesta ante la Comisión Electoral, por la sencilla razón de que ello engendraría las siguientes anomalías; (a) la creación de dos jueces: uno, para credenciales no protestadas—la Asamblea Nacional o Congreso; y otro, para credenciales protestadas—la Comisión o Tribunal Electoral; (b) en un momento dado, una mayoría sin escrúpulos, viendo peligrar el poder en sus manos después de unas elecciones renidisimas, podría dar un golpe de mano mediante la estratagema de hacer que sus candidatos derrotados se inhiban de protestar ante el Tribunal Electoral a fin de dar lugar a que el Congreso actúe directamente sobre el caso, con la mira de ajustificar a los candidatos mirioritarios triunfantes bajo la guillotina de lo que el cinismo de los descreídos ha llamado justicia política de las mayorías; (c) ocurriría la paradoja de que las credenciales no protestadas estarían en peor situación que las protestadas, porque mientras estas últimas tendrían el beneficio de una justicia de verdad, la justicia judicial del Tribunal Electoral, aquéllas caerían bajo la justicia política de las mayorías, sedientas de sangre adversaria. Es indudable que, como nemos dicho en otra parte de esta disidencia, la Asamblea Constituyente no podía ser parte en un juego infantil como éste; y el Delegado Roxas, con su seriedad, con su bien conocida madurez política, con su devoción a la causa de la libertad y demcoracia, de ningún modo podía ser corresponsable de un precepto constitucional que pudiera dar lugar a tan tremendas anomalías. Y ¿qué decir del Delegado Rafóls? ¿Cómo se puede concebir que, con sus tristes reminiscencias de la justicia política de las mayorías, diera su patrocinio a una enmienda que pudiera producir tales consecuencias?

Para remachar la tesis de que cada cámara de nuestro Congreso todavía retiene la facultad de determinar "la elección, las actas y las cualificaciones de sus miembros" en casos en que no hay protesta, la mayoría propone en su opinión el siguiente ejemplo: "Es elegido por un distrito congresil un hombre que había servido previamente 10 años en las Prisiones de Bilibld, por estafa. Como no tuvo contrincante (¡este hombre debía de ser muy popular!), ninguna protesta se formula contra su elección. Y naturalmente el Tribunal Electoral no adquiere jurisdicción sobre el caso, pues no hay 'contest' o controversia. Una vez informada del hecho ¿no puede la Cámara, motu proprio, suspender la toma de su juramento? ¿No puede la Cámara investigar y después excluirle? Se observara que cuando un miembro de la Cámara suscita una cuestión respecto a las cualificaciones de otro, de ello no se sigue un pleito electoral, pues ninguno pretende sustituir a este último,"

Parecería que estábamos excusados de replicar a este argumento por dos razones; primera, porque evidentemente el ejemplo propone un caso que es completamente distinto del que nos ocupa, pues los recurrentes no están acusados de estafa ni de nada que afecta a su carácter, y su caso, como ya hemos dicho, es de motivación enteramente electoral, es decir, relacionada con la forma cómo fueron elegidos que se dice viciada por actos de violencia y terrorismo de sus partidarios; y segunda, porque si bien es verdad que el ejemplo es meramente hipotético, plantea, sin embargo, un caso que puede perfectamente ocurrir y parecería que ni esta Corte ni ningún miembro suyo debería adelantar su opinión sobre semejante hipótesis susceptible de realizarse. Pero como del ejemplo se pretende hacer argumento aquiles, no tenemos más remedio que comentarlo y diacutirlo.

Ante todo se deben deslindar bien los conceptos. El derecho o facultad de expulsar a un miembro de una cámara legislativa (Artículo VI, sección 10, ap. 3, Constitución de Filipinas) es una cosa bien diferente del derecho de rehusar la admision de uno para ser miembro de dicha cámara. En esto último las cuestiones envueltas se refieren

principalmente, tal vez exclusivamente, a las cualificaciones constitucionales de aquellos que se presentan para ser admitidos como miembros, o bien a la regularidad y legalidad de las elecciones en que fueron elegidos; mientras que en lo primero, esto es, en lo que toca a la expulsión, lo que da lugar a la acción es el carácter personal o conducta de la parte afectada (Willoughby, *On the Constitution of the United States*, tomo I.[o], pág. 611).

En el ejemplo que propone la mayoría, la condena por estafa no es cosa que guarda relación con las cualificaciones constitucionales del congresista o Representante electo ni con la regularidad y legalidad de las elecciones en que salió victorioso, por cierto sin ningún contrincante. Es cosa que afecta a su carácter personal o conducta. Por tanto, no cabe discutir su derecho a ser admitido como miembro de la cámara; él reúne las cualificaciones constitucionales (ciudadanía, edad, etc.) para ser Representante y la limpieza de su elección está admitida. Así que, parafraseando al Delegado Roxas, la "presentación de su credencial de que ha sido elegido, es bastante para que sea admitido como miembro." Pero ¿la condena por estafa? ¿No puede la cámara por este motivo investigarle y excluirle como elemento no deseable?—pregunta la mayoría. Esta es otra cuestión. Ya hemos visto que el derecho de admisión es una cosa, y el derecho de expulsión, otra. El derecho de expulsión, por mala conducta, lo tienen las cámaras independientemente del Tribunal Electoral. Ya lo dijo el Delegado Roxas, contestando al Delegado Labrador: la facultad de remover, en tratándose de la "elección actas y cualificaciones de los miembros", la tiene la Comisión o Tribunal Electoral, previa protesta; la facultad de remover, por mala conducta, la tiene la Asamblea (Congreso).

Pero examinemos el ejemplo de la estafa que plantea la mayoría hasta sus últimas consecuencias. Willoughby dice que sobre este respecto el punto principal de controversia es si los actos de mala conducta objeto de queja deben ser sólo los subsiguientes a la elección y que afecten a la dignidad del Congreso y al debido desempeño de sus funciones, o deben ser también los anteriores. "Respecto de los actos de los miembros electos cometidos con anterioridad a su elección se ha argumentado fuertemente que las Cámaras no deben tenerlos en cuenta, pues se debe conceder que los electores tienen el derecho de elegir a quienes quieran para representarles en el Congreso, y se debe presumir que han tenido en cuenta el carácter y la conducta de aquéllos a quienes eligen."

"A disregard of the foregoing doctrine, it has been urged, operates as a denial to the States of a right or privilege constitutionally provided for them. Thus, we find James M. Beck, former Solicitor General of the United States, declaring: 'It seems too clear for argument, that each State has the right to select from its people any representative in the Senate (or the house) that it sees fit, irrespective of his intellectual or moral qualifications, (provided he possesses the qualifications specified in the Constitution) * * *.' A state may have selected a member of the senate or secured his nomination by unworthy means. He may be intellectually unfitted for the high office, and his moral character may, in other respects, leave much to be desired. The people of the United States may justifiably think that the State has sent to Congress an unfit man, who could add nothing to its deliberations, and whose influence might well be pernicious. None the less, the state has the right to send him. It is its sole concern, and to nullify its choice is to destroy the basic right of a sovereign State, and amounts to a revolution" (Willoughby, *idem*, pp. 611, 612).

"El primer precedente—añade el autor citado—de que, como base para expulsión, los actos cometidos antes de la elección no deben ser considerados, fué en el caso del Senador Humphrey Marshall, en 1796, quien fué acusado de que había cometido perjurio. El Senado en este caso se negó a tomar jurisdicción para determinar si, de hecho, Marshall había sido reo de un delito, a pesar del hecho de que él pidió que el senado investigase y determinase el caso" (*supra*, p. 612). Parece que en estos casos el criterio general y predominante es que el sufragio popular es como una especie de Jordán que lava con sus aguas purificadoras todos los pecados cometidos antes de la elección. Es como si al pueblo se le supusiera investido de la facultad suprema de indultar totalmente a sus favoritos por medio de la balota electoral.

Se insinúa que los recurridos tenían la facultad de adoptar la Resolución Pendatun en virtud del principio de que

todo cuerpo legislativo tiene el poder inherente de adoptar reglas para su organización, funcionamiento y preservación. Se cita la práctica legislativa de que al inaugurarse un cuerpo deliberativo se forma un comité de credenciales que examina los certificados o títulos que presentan los miembros para su admisión. Dicho comité rinde su informe recomendando la aprobación o desaprobación de las credenciales. No puede sostenerse una tesis más peligrosa que ésta. Las cámaras legislativas son más, muchísimo más que una cámara de comercio, por ejemplo. Los legisladores son funcionarios constitucionales. Sus cualificaciones, la investidura y el ejercicio de su cargo, el término del mismo, están definidos y amparados por la Constitución mediante preceptos y disposiciones que operan como limitaciones constitucionales sobre el poder legislativo en general. Esos preceptos y disposiciones no se pueden enmendar o derogar mediante una ley ordinaria, mucho menos mediante una resolución simple como la del Senador Pendatun: para enmendarlos o derogarlos hace falta que se reforme la Constitución por los procesos que ella preceptúa. Hacer depender la admisión del legislador o la tenencia de su cargo de una resolución o acuerdo reglamentario es de lo más subversivo, pues le reduciría a una situación tan precaria y tan endeble que un mero empleado del servicio civil tendría más prestancia y más seguridad que él.

Se nos cita, sin embargo, el caso de *Barry vs. United States ex rel. Cunningham*, (279 U. S. 867, 874; 73 Law ed. 597), para demostrar que la Resolución Pendatun es válida y legal por entrar y recaer dentro del poder inherente del Senado para suspender a cualquier miembro, independientemente de la cuestión electoral. Hemos revisado cuidadosamente la sentencia citada y la hemos hallado inaplicable al presente caso. Es verdad que ella tiene cierta relación con el caso de *Vare*, candidato a Senador en Pennsylvania en las elecciones de 1926, a quien se le negó *prima facie* el asiento mientras se efectuaba una investigación de alegados irregularidades y prácticas corruptas cometidas para promover su nominación y su elección, entre ellas el haber gastado centenares de miles de dólares, el haber hecho promesas impropias e ilegales, etc., etc. Pero aparte de que la suspensión del juramento y asiento de *Care* caía perfectamente dentro de los poderes expresos e inherentes del Senado americano como "único juez de la elección, actas y calificaciones de sus miembros", sólo muy incidental y colateralmente se habla de esto en el caso de *Barry*. La única y verdadera cuestión planteada en este caso era la de si a un tal *Cunningham* se le podía arrestar, mediante orden del Senado, y traerle a la barra para contestar a ciertas preguntas sobre la procedencia de ciertos fondos gastados en la nominación y elección de *Vare*. La Corte Suprema Federal dijo que sí, que esto caía dentro de los poderes judiciales del Senado. "Generally"—dice la Corte—"the Senate is a legislative body, exercising in connection with the House only the power to make laws. But it has had conferred upon it by the Constitution certain powers which are not legislative but judicial in character. Among these is the power to judge of the elections, returns and qualifications of its members. That power carries with it authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections" (*Barry*, *supra*, 871). Y al final de la sentencia la Corte sienta la siguiente afirmación que es muy significativa para el presente caso: "Here the question under consideration concerns the exercise by the senate of an indubitable power; and if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law. That condition we are unable to find in the present case (*Barry*, *supra*, 874). De suerte que, bien mirado, el asunto de *Barry* hasta es un argumento en favor de la jurisdicción de esta Corte Suprema para conocer y enjuiciar la resolución Pendatun, para determinar si con ella se ha infringido o no la Constitución.

Se arguye que los recurridos no hicieron más que actuar sobre un informe rendido por la Comisión sobre Elecciones en obediencia a un mandato constitucional. En el informe se recitaban ciertos hechos y se sentaban conclusiones sobre alegados actos de terrorismo y violencia que podían afectar a la elección de los recurrentes. Se dice que la Resolución Pendatun no es sino la reacción, la respuesta de los recurridos a dicho informe; que éstos tenían absoluta discreción sobre el particular; que ello entraba dentro de sus poderes políticos y no era revisable por el departamento judicial. Pare contestar esto nos bastará repetir que la Resolución Pendatun es algo más que

el ejercicio de un poder político y discrecional; es una usurpación de poderes constitucionales pertenecientes a otro organismo constitucional; y para demostrarlo no necesitamos reproducir los argumentos ya extensamente expuestos.

Por lo demás, el discutido informe de la Comisión sobre Elecciones no tiene el valor ni alcance que le atribuyen. Ese informe no podía autorizar ni justificar ninguna acción que como la Resolución Pendatun tuviese el efecto de privar a los recurrentes de sus asientos en el Senado, siquiera temporalmente. El documento sometido por la Comisión sobre Elecciones que tiene verdadero valor constitucional y legal, que tiene fuerza obligatoria, es su proclama declarando electos a los recurrentes. Esa proclama impone a los recurridos el deber ministerial de recibir y aceptar a los recurrentes como miembros del Senado hasta que el Tribunal Electoral diga otra cosa. ¿Cómo un informe, que ni siquiera es el resultado de una investigación propia, sino que está basado en otros informes de fuera, podía tener la trascendencia que se le ha dado, tomando pie del mismo para una sacudida sísmica de tales proporciones como es la suspensión de los derechos de tres miembros electos del Senado y siete miembros electos de la Cámara de Representantes? Ni la imaginación más libre y errática en la Asamblea Nacional pudo haberse figurado jamás este efecto a cuenta de esa cláusula inofensiva de la Constitución que manda a la Comisión sobre Elecciones presentar un informe después de cada elección al Jefe Ejecutivo y al Congreso.

La acción sobre ese informe no puede ir más allá de los límites que confinan cada poder. El Ejecutivo, por ejemplo, investigaría los abusos e irregularidades de los funcionarios encargados de ejecutar y hacer cumplir la Ley Electoral en cumplimiento de su mandato constitucional de ejecutar las leyes y de hacer que éstas se ejecuten (Constitución de Filipinas, Artículo VII, secciones 7 y 10); y el Congreso estudiaría y consideraría reformas a la ley con vista de dichos informes, o bien crearía inmediatamente el Tribunal Electoral para despachar sin demora las protestas sobre elecciones legislativas. El Ejecutivo no podría, por ejemplo, so pretexto de tremendas irregularidades y anomalías expuestas en el informe sobre elecciones locales y provinciales, mandar suspender el juramento de algún concejal, alcalde o gobernador provincial electo, puesto esto sería una usurpación y una invasión de la jurisdicción de los tribunales de justicia.

De todo lo antedicho resulta evidente que, resolviendo la primera cuestión propuesta la Resolución Pendatun objeto de controversia es ilegal, es anticonstitucional y es, por tanto, insostenible.

”Segunda cuestión.—A la luz de nuestra Constitución y de nuestras leyes ¿tiene este Tribunal Supremo jurisdicción y competencia para conocer, enjuiciar y decidir el asunto?”

Los recurrentes invocan nuestra jurisdicción pidiendo un remedio a que, según ellos, tienen derecho bajo la Constitución y la ley. Alegan que son Senadores electos y, por tanto, funcionarios constitucionales de Filipinas, pues el Senado es cuerpo constitucional; que han sido debidamente proclamados por la Comisión sobre Elecciones bajo las disposiciones de la Ley No. 725 y, por tanto, tienen derecho por ministerio de la Constitución y de la ley a ocupar sus asientos en el Senado con todos los derechos, prerrogativas y privilegios anejos al cargo; que, sin embargo, los recurridos, o más bien una mayoría de ellos, han aprobado una resolución—la Resolución Pendatun—por la cual se les priva de sus asientos; que dicha resolución infringe la Constitución y la ley; por tanto, piden dictemos sentencia “declarando enteramente nula y de ningún valor la citada resolución, y prohibiendo consecuentemente a los recurridos y a cada uno de ellos a impedir a los recurrentes a continuar en sus asientos en el Senado de Filipinas y a ejercer libremente sus cargos como Senadores, y prohibiéndoles igualmente a realizar cualquier otro procedimiento ulterior para ejecutar la resolución citada.” ¿Podemos negarnos a asumir la jurisdicción que se invoca? ¿Hay alguna manera de evadir la cuestión, inhibiéndose este Tribunal de declarar si es o no verdad que se han infringido la Constitución y la ley, y de conceder el remedio pedido si ha habido tal infracción? La comodidad, la línea de menor resistencia hubiera sido por el lado de la inacción, de la inhibición. Nos damos perfecta cuenta de la tremenda responsabilidad que supone el mantener la armonía entre los poderes

del Estado. Es parte de la prudencia y sabiduría de los gobernantes el evitar en todo lo posible cualquier ocasión de conflicto entre dichos poderes, recordando siempre que si las instituciones son entidades abstractas, por ende anestésicas, insensibles, los hombres están hechos de arcilla animada y ya no son tan impasibles como las instituciones. Pero nemos hallado que en el presente caso nuestro deber de actuar, y de actuar positivamente, tiene la fuerza de un imperativo categórico. Nuestra jurisdicción está escrita en la Constitución, se halla reatirmada en la ley. En el Título VIII de la Constitución (sobre la judicatura) esta declarada tanto implícita como expresamente la facultad judicial de resolver y decidir casos constitucionales; y en la regla 67 del Reglamento de los Tribunales hallamos la implacientación procesal de esa jurisdicción y competencia.

Puede decirss que en este respecto nuestra Constitucion es una edición mejorada de la Constitución federal de los Estados Unidos. Como se sabe, la llamada facultad judicial de revisar la Constitucion en controvsrsias propiamente planteadas no se halla concedida expresamente en la magna carta americana. Ha sido el genio audaz de sus juristas, particularmente del gran Marshall, el que arrancó esa facultad de las penumbras de la Constitución (Marbury vs. Madison [1803], 1 Cranch, 137) contribuyendo ello grandemente, según opinión general de los críticos tanto nacionales como extranjeros, a fortalecer y estabilizar las institcuciones políticas de América. Aprovechando la experiencia americana hemos escrito expresamente en nuestra Constitución lo que en América no era más que doctrina judicial o jurisprudencia.

Se dice, sir embargo, con todo énfasis, con todo vigor, que atin admitiendo que los recurridos, actuando como mayoría del Senado, hayan infringido la Constitución al aprobar la Resolución Pendatun y hacerla efectiva, con todo la judicatura, la judicatura filipina no tiene jurisdicción para intervenir en el caso, bajo el principio de la separación de poderes que in form a nuestra Constitución. Se arguye que los tres poderes del Estado son iguales; que ninguno de ellos es superior al otro; que cada poder puede interpretar la Constitución a su modo y cuando así lo hace ningun otro poder puede ni debe entrometerse y revisar su interpretación; que el Senado es el unico juez de sus actos y si algún ciudadano sale agraviado por algún alegado atropello a sus derechos constitucionales, su recurso no esta en acudir al poder judicial o al poder ejecutivo, sino en apelar directatamente al pueblo en la época de elecciones, en los comicios, empleando el arma civil por excelencia del ciudadano—la balota; y, finalmente, que el poder judicial no es un "cúralo todo", una especie de Don Quijote que con la lanza en ristre pretenda enderezar todos los entuertos.

Como se ve, nos llaman a decidir cuestiones de tremenda importancia para el desenvolvimiento constitucional en este país; lo que resolvamos puede trascender mucho más allá del promedio de tiempo en que puede durar nuestra existencia. Puede decirse sin inmodestia que grandes decisiones del future—empleamos la palabra no en su sentido exclusivamente—dependerán de cómo resolvamos esas cuestiones formidables que se nos plantean hoy.

En parte, el argumento expuesto es correcto y acertado. No se puede discutir que los tres poderes del Estado son iguales e independientes entre sí; que ninguno de ellos es superior al otro, mucho menos el poder judicial que entre los tres es el menos fuerte y el más precario en medios e implementos materiales. Tampoco se puede discutir que bajo la Constitución cada poder tiene una zona, una esfera de acción propia y privativa, y dentro de esa esfera un cúmulo de facultades que le pertenecen exclusivamente; que dentro de esa esfera y en el uso de esas facultades cada poder tiene absoluta disereción y ningún otro poder puede controlar o revisar sus actos so pretexto de que alguien los cuestiona o tacha de arbitrarios, injustos, imprudentes o insensatos. Pero la insularidad, la separación llega sólo hasta aquí. Desde Montesquieu que lo proclamó científicamente hasta nuestros días, el principio de la separación de poderes ha sufrido tremendas modificaciones y limitaciones. El consenso doctrinal hoy es que la teoría es sólo relativa y que la separación de poderes queda condicionada por una mecánica constitucional—la mecánica de los frenos y cortapises. (Willoughby, *On the Constitution of the United States*, tomo 3, pags. 1619, 1620, 2.[a] edición). Como queda dicho, cada poder es absoluto dentro de la esfera que le asigna la Constitución;

allí el juego de sus facultades y funciones no se puede coartar. Pero cuando se sale y extravasa de esa esfera invadiendo otras esferas constitucionales, ejerciendo facultades que no le pertenecen, la teoría de la separación ya no le ampara, la Constitución que es superior a él, le sale al encuentro, le restringe y le achica dentro de sus fronteras, impidiendo sus incursiones anticonstitucionales. La cuestión ahora a determinar es si bajo nuestro sistema de gobierno hay un mecanismo que permite restablecer el juego normal de la Constitución cuando surgen estos desbarajustes, estos conflictos que podríamos llamar de fronteras constitucionales; también es cuestión a determinar si cuando surgen esos conflictos, un ciudadano sale perjudicado en sus derechos, el mismo tiene algún remedio expedito y adecuado bajo la Constitución y las leyes, y quién puede concederle ese remedio. Y con esto llegamos a la cuestión básica, cardinal en este asunto.

Nuestra opinión es que ese mecanismo y ese remedio existen—son los tribunales de justicia. “The very essence of the American conception of the separation of powers is its insistence upon the inherent distinction between law-making and law-interpreting, and its assignment of the latter to the judiciary, a notion which, when brought to bear upon the Constitution, yields judicial review” (Corwin, *The Twilight of the Supreme Court*, p. 146). En *Angara contra Comisión Electoral*, (supra,) dijimos que “prescindiendo del tipo inglés y otros tipos europeos de gobierno constitucional, los redactores de nuestra Constitución han adoptado el tipo Americano, en donde el departamento judicial interpreta y da efecto a la Constitución escrita. En algunos países que han rehusado seguir el ejemplo americano, se han insertado disposiciones en sus constituciones prohibiendo a los tribunales que ejerciten su facultad de interpretar la ley fundamental. Esto se toma como un reconocimiento de lo que de otro modo sería la regla de que a falta de prohibición expresa los tribunales están obligados a asumir lo que lógicamente es deber suyo” (*Angara contra Comisión Electoral*, 63 Jur. Fil., 173, 174.).

En el famoso asunto de *Marbury vs. Madison*, supra, el Tribunal Supremo de los Estados Unidos, por boca de su gran Chief Justice John Marshall, en términos inequívocos definió y explicó las facultades de la judicature para poner en vigor la Constitución como la suprema ley del país, y declaró que “es terminantemente de la competencia y deber del departamento judicial el decidir cuál es la ley que rige.”

“The reasoning of Webster and Kent is substantially the same. Webster says: ‘The constitution being the supreme law, it follows of course, that every act of the legislature contrary to the law must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the Constitution ceases to be legal and becomes only a moral restraint for the legislature. If they, and they only, are to judge whether their acts be conformable to the Constitution, then the Constitution is advisory and accessory only, not legally binding; because, if the construction of it rest wholly with them, their discretion, in particular cases, may be in favor of very erroneous constructions. Hence the courts of law, necessarily, when the case arises, must decide upon the validity of particular acts.’ Webster, *Works*, Vol. III, 30.” (Willoughby on the constitution of the United States, Vol. 1, 2nd Edition, pp. 4-5.)

En realidad, esta cuestión no es nueva en esta jurisdicción. El precedente más inmediato que tenemos en nuestra jurisprudencia es el asunto de *Angara contra Comisión Electoral* ya tantas veces citado (1936). Por primera vez se planteaban y discutían ante esta Corte cuestiones importantísimas resultantes de la Constitución del Commonwealth que acababa de promulgarse. Se trataba precisamente de deslindar las zonas constitucionales ocupadas por la Asamblea Nacional y la Comisión Electoral; es decir que, fundamentalmente, casi, casi las mismas cuestiones que ahora se plantean ante nosotros. La teoría de la separación de poderes—el leit motif de la presente controversia—se analizó y discutió allí hasta en sus últimas implicaciones y consecuencias. Brevemente expuestos los hechos eran los siguientes: José Angara había sido proclamado Representante electo por uno de los distritos de Tayabas. Al inaugurarse la Asamblea Nacional su acta fue confirmada por este cuerpo juntamente con las de otros Representantes contra quienes no se habían formulado protestas. El acta de Angara no estaba protestada entonces. Algunos días después Pedro Insua, su contrincante, presentó una protesta ante la Comisión

Electoral que acababa solamente de constituirse. Escudado tras el hecho de que su acta ya había sido confirmada por la Asamblea Nacional, Angara vino a esta Corte planteando una acción originaria para que se expidiera un mandamiento de inhibición; prohibiéndole a la Comisión Electoral que siguiera conociendo de la protesta. Esta Corte aceptó el reto asumiendo jurisdicción sobre el caso, procediendo a desempeñar su alta función de interpretes de la Constitución y haciendo lo que gráficamente llamó deslinde de facultades constitucionales. Reconociendo y estableciendo firmemente la jurisdicción exclusiva de la novísima Comisión Electoral sobre controversias relativas a la elección de miembros de la Asamblea Nacional, esta Corte denegó el recurso de prohibición. Llevando las cosas por la tremenda, la Asamblea Nacional, bajo la teoría de la separación de poderes, pudo haber ignorado la decisión de esta Corte, pudo haber pasado por encima de la Comisión Electoral conservándole el asiento a Angara, ya que el acta de éste había sido confirmada por ella cuando aun no había protesta. No lo hizo. La Constitución, casi entre los pañales aún de su cuna, se salvó gracias a la compostura de todo el mundo, saliendo ilesa de la prueba, rodeada de grandes prestigios. Las conclusiones y pronunciamientos de la Corte por boca del ponente el Magistrado laurel, parecen estereotipados para el caso que nos ocupa y para el presente momento histórico con todas sus crisis; así que los vamos a reproducir en toda su integridad a continuación:

"La separación de poderes es un principio fundamental de nuestro sistema de gobierno. Se establece, no por disposición expresa, sino por división real trazada en nuestra Constitución. Cada departamento del Gobierno tiene conocimiento exclusivo de las materias que caen dentro de su jurisdicción, y es supremo dentro de su propia esfera. Pero del hecho de que los tres poderes han de conservarse separados y distintos no se sigue que la Constitución se propuso que fueran absolutamente irrestringidos e independientes unos de otros. La Constitución ha dispuesto un sistema elaborado de frenos y cortapisas para asegurar coordinación en los trabajos de los varios departamentos del Gobierno. Por ejemplo, el Jefe Ejecutivo, bajo nuestra Constitución, es hasta tal punto erigido en un freno para el poder legislativo que se requiere su asentimiento en la aprobación de las leyes. Sin embargo, esto está sujeto al ulterior freno de que un proyecto de ley puede convertirse en ley no obstante la negativa del Presidente de aprobarlo, por medio de una votación de dos tercios o tres cuartos, según sea el caso, de la Asamblea Nacional. También tiene el Presidente facultad de convocar a la Asamblea cuando lo crea conveniente. Por otra parte, la Asamblea Nacional funciona como un freno sobre el Ejecutivo, en el sentido de que es necesario su consentimiento, por medio de la Comisión de Nombramientos, en el nombramiento de ciertos funcionarios; y es esencial la conformidad de todos sus miembros para la conclusión de tratados. Además, en su facultad de determinar que tribunales, que no sea el Tribunal Supremo, se habrán de establecer, para definir su competencia, y para destinar fondos para su sostenimiento, la Asamblea Nacional rige al departamento judicial en cierto grado y medida. La Asamblea ejerce, también, la facultad judicial de conocer de recusaciones. Y la judicatura, a su vez, con el Tribunal Supremo por árbitro final, frena con efectividad a los demás departamentos en el ejercicio de su facultad de determinar la ley, y de aquí que pueda declarar nulos los actos ejecutivos y legislativos, que contravengan la Constitución.

"Pero, en esencia, la Constitución ha delincado, con mano firme y en términos enérgicos la asignación de facultades a los departamentos ejecutivo, legislativo y judicial del Gobierno. La superposición y el entrelazamiento de funciones y deberes de los varios departamentos, sin embargo, a veces hace difícil decir precisamente dónde termina uno y empieza otro. En tiempos de intranquilidad social o excitación política, las grandes piedras angulares de la Constitución son susceptibles de ser olvidadas o anuladas, si no desatendidas enteramente. En casos de conflicto, el departamento judicial es el único organismo constitucional que puede ser llamado para determinar el propio deslinde de facultades entre los varios departamentos y entre las unidades integrales o constituyentes de los mismos.

"Como cualquier producto humano, nuestra Constitución carece, desde luego, de perfección y perfectibilidad; pero, en tanto en cuanto estaba en manos de nuestro pueblo disponerla así, obrando por medio de sus delegados, ese instrumento, que es expresión de su soberanía, por limitada que sea, ha establecido un gobierno republicano no destinado a obrar y funcionar como un conjunto armónico, bajo un sistema de frenos y cortapisas, y con sujeción a las limitaciones y restricciones que se disponen en dicho instrumento. La

Constitución señala, en un lenguaje nada incierto, las restricciones y limitaciones de los poderes y organismos gubernamentales. Si estas restricciones y limitaciones fueran trapuestras. Sería inconcebible que la Constitución no hubiera dispuesto un mecanismo por el cual pudiera encauzarse el curso del Gobierno por los canales constitucionales, pues entonces la distribución de poderes sería mera palabrería, el bill de derechos meras expresiones sentimentales, y los principios de buen gobierno meros apotegmas políticos. Ciertamente, las limitaciones y restricciones que comprende nuestra Constitución son reales, como debe serlo en cualquier Constitución. En los Estados Unidos en su Constitución, la posesión de este poder moderador de los tribunales, por no decir ya nada de su origen histórico y desenvolvimiento aquí, ha sido dejado en reposo por la aquiescencia popular por un período de más de un siglo y medio. En nuestro caso, este poder moderador está concedido, si no expresamente, por deducción tácita del artículo 2, Título VIII, de nuestra Constitución.

“La Constitución es una definición de las facultades del Gobierno. ¿Quién es el llamado a determinar la naturaleza, propósito y alcance de esas facultades? La Constitución misma ha dispuesto el organismo de la judicatura como el medio racional. Y, cuando la judicatura media para determinar los linderos constitucionales, no mantiene ninguna superioridad sobre los otros departamentos; en realidad no anula ni invalida un acto de la Legislatura, sino que solamente asevera la solemne y sagrada obligación a ella asignada por la Constitución de determinar pretensiones incompatibles de autoridad dimanada de la Constitución, y de establecer para las partes en una controversia actual los derechos que ese instrumento asegura y garantiza a las mismas. Esto, a la verdad, es todo lo que va implícito en la expresión ‘supremacía judicial’, que propiamente es la facultad de revisión judicial bajo la Constitución. Aun entonces, este poder de revisión judicial está limitado a casos y controversias reales, que se ha de ejercitar después de que las partes han tenido plena libertad de hacerse oír, y está, además, limitado a la cuestión constitucional suscitada, o a la misma lis mota planteada. Cualquier tentativa de abstracción, sólo conduciría a la dialéctica, y obstaculizaría las cuestiones legales, y a conclusiones estériles que nada tendrían que ver con los hechos reales. Circunscrita de este modo a sus funciones, la judicatura no se ocupa de resolver cuestiones sobre la cordura, justicia o conveniencia de la legislación. Aun más, los tribunales conceden la presunción de constitucionalidad a las leyes aprobadas por la Legislatura, no solamente porque se presume que ésta acata la Constitución, sino, también, porque la judicatura, en el fallo de actuales casos y controversias, debe reflejar la sabiduría y la justicia del pueblo, tal y como se han expresado por medio de sus representantes y por los departamentos ejecutivo y legislativo del Gobierno.

“Pero por mucho que pudieramos postular sobre los frenos internos de poderes que dispone nuestra Constitución, debe, con todo, recordarse que, según las palabras de James Madison, el sistema mismo no es ‘el principal paladín de la libertad constitucional * * * el pueblo, que es el autor de esta bendición, debe, también, ser su guardian * * * sus ojos deben siempre estar alertos para señalar, su voz para delatar * * * agresiones a la autoridad de su constitución.’ En último análisis, pues, el triunfo de nuestro Gobierno en los años venideros deberá ser puesto a prueba en el crisol de las mentes y en los corazones de los filipinos, más bien que en las salas de consultas y cámaras de audiencia de los tribunales.” (Angara contra Comisión Electoral, 63 Jur. Fil., pp. 169-172.)

Algo más se pudo añadir sobre el caso de Angara. Allí la Corte descartó sin vacilaciones la posibilidad de un vacío, de un estado jurídico de inerte impotencia frente a conflictos constitucionales, sentando la siguiente conclusión: “En nuestro caso, la índole de la actual controversia revela la necesidad de un árbitro constitucional último que determine la incompatibilidad de facultades entre dos organismos creados por la Constitución. Si fuéramos a rehusar el conocer de la controversia ¿quién determinaría el conflicto? Y si se dejara sin decidir ni determinar el conflicto ¿no se crearía en sí un vacío en nuestro sistema constitucional que a la larga daría por resultado echar a perder toda la labor? El hacer estas preguntas es contestarlas. Natura vacuum abhorret, por lo que debemos evitar toda postración en nuestro sistema constitucional.” No solamente esto—añadimos—sino que a toda costa debemos evitar que fuera de la legalidad se forme un “territorio de nadie” donde puedan germinar situaciones peligrosas y explosivas.

Pero además del caso de Angara tenemos en nuestra jurisprudencia otro precedents más inmediato todavía en apoyo de la tesis de la supremacía judicial en tratándose de interpretar la Constitución y de dirimir conflictos constitucionales; nos referimos al asunto de Carmen Planas, recurrence, contra José Gil, Comisionado del Servicio Civil, recurrido, decidido por este Tribunal Supremo el 18 de Enero de 1939 bajo la ponencia del mismo Magistrado Laurel (67 Phil., 62) Carmen Planas, siendo miembro de la Junta Municipal de Manila, publicó un artículo en La Vanguardia criticando duramente a ciertos funcionarios del Gobierno, entre ellos el Presidente de Filipinas Sr. Quezon, en relación con las elecciones de Diputados a la Asamblea Nacional celebradas el 8 de Noviembre de 1938. Entre los fuertes cargos formulados por la articulista contra log dioses del Olimpo oficial, figuraban los siguientes: que, no obstante el tácito interdicto impuesto por la Constitución al disponer que el Presidente de Filipinas ejerciese su cargo por un solo period—6 años—sin reelección, situándosele de esta manera en las serenas alturas del Poder como un supremo árbitro, moderador y neutral, el Sr. Quezon intervino activamente en aquellas elecciones a favor de los nacionalistas poniendo en juego toda la enorme influencia de su cargo y aplastando así a los candidatos de la oposición; que toda la maquinaria del Gobierno se movilizó a favor de los candidatos nacionalistas, colocándose en la vanguardia de dicha movilización los miembros del Gabinete; y que no se escatimaron medios para asegurar el triunfo de los candidatos de la administración, el fraude y la corrupción inclusive. Al día siguiente de haberse publicado este artículo sensacional, la Srta. Planas recibió una carta firmada de la siguiente manera: “By authority of the President: Jorge B. Vargas, Secretary to the President,” en donde se le decía; “por la presente se le instruye que comparezca ante el Comisionado del Servicio Civil, sola o acompañada por un abogado, a las 9 de la mañana, Noviembre 23, para probar las declaraciones hechas por usted. El que tales cargos no se puedan sostener o no se pruebe que se han hecho de buena fe, será” considerado como razón suficiente para su suspensión o destitución del cargo.”

La Srta. Planas objetó a la investigación recusando al Comisionado del Servicio Civil. Este, sin embargo, insistió en proseguir la investigación y fué entonces cuando ella vino ante este Tribunal Supremo pidiendo un mandamiento de prohibición contra el Comisionado, por los siguientes fundamentos, entre otros: que bajo la Constitución y las leyes que protegen la libertad de palabra y de expresión, ella tenía derecho a formular la censura de que se trata como libre ciudadana de un país democrático; que, en efecto, ella escribió el artículo no como concejal sino como persona particular; que como funcionario ella solamente podía ser investigada y exigírsele responsabilidad por motivo de prevaricación, mala conducta o infracción relacionada con su cargo, y éste no era el caso; que suponiendo que el artículo en cuestión fuera libeloso o contuviera algo por lo cual la articulista pudiera ser criminalmente responsable, el Código penal y el Procedimiento Criminal señalan el modo de hacer electiva esa responsabilidad ante los tribunales de justicia. El procurador General, al impugnar el recurso, alegó entre otros fundamentos que este Tribunal, bajo “el principio de la separación de poderes establecido por la Constitución, no tenía jurisdicción para revisar las órdenes del Jefe Ejecutivo de que se trata, las cuales son de carácter puramente administrativo”, citándose en apoyo de la impugnación las sentencias de este Tribunal en los asuntos de Severino contra El Gobernador General y Junta Provincial de Negros Occidental, Abueva contra Wood y Alejandrino contra Quezon, citados en otra parte de esta disidencia. Esta Corte desestimó la objeción y resolvió que tenía jurisdicción y competencia sobre el caso, diciendo que si bien “los actos del Ejecutivo ejecutados dentro de los límites de su jurisdicción son sus actos oficiales y los tribunales no dirigirán ni controlarán la acción ejecutiva en tales casos” (la regla es la de no-intervención), sin embargo, “de esta premisa legal no se sigue necesariamente que no podemos inquirir la validez o constitucionalidad de sus actos cuando éstos se cuestionan y atacan en un procedimiento legal apropiado.” “Por lo que respecta a la judicature”—añadió esta Corte—“si bien es verdad que ella no agarra ‘ni la espada ni la bolsa’, es por arreglo constitucional el órgano llamado para deslindar las fronteras constitucionales, y al Tribunal Supremo está encomendada expresamente o por necesaria implicación la obligación de determinar la procedencia apropiada la validez o constitucionalidad de cualquier tratado, ley, ordenanza, orden ejecutiva o regulación.”

Es verdad que esta Corte denegó el recurso interpuesto por la Srta. Planas, pero no por el fundamento de la falta de jurisdicción alegado por el procurador General, sino poraue llegó a la conclusión de que la orden de investigación cuestionada caía dentro de los límites constitucionales de la jurisdicción del Presidente, y, por tanto, era válida, constitucional y legalmente. He aquí los pronunciamientos pertinentes de la Corte, los cuales no tienen desperdicio y reafirman con todo vigor la doctrina de la supramacía judicial en materia de deslindes constitucionales, establecida en el asunto de Angara, a saber:

"The Solicitor General, under the last paragraph (par. 10) of his amended answer, raises the question of jurisdiction of this court over the acts of the Chief Executive. He contends that under the separation of powers marked by the constitution, the court has no jurisdiction to review the orders or the Chief Executive, evidenced by Annex A and Annex C of the petition, which are of purely administrative character.' Reliance is had on the previous decisions of this court; *Severino vs. Governor-General* ([1910], 16 Phil., 366); *Abueva vs. Wood* ([1924], 45 Phil., 612); and *Alejandrino vs. Quezon* ([1924], 46 phil., 83). Although this is the last point raised by the Government in its answer, it should, for reasons that are apparent, be first to be considered. If this court does not have jurisdiction to entertain proceedings, then, the same should be dismissed as a matter of course; otherwise, the merits of the controversy should be passed upon and determined.

"It must be conceded that the acts of the Chief Executive performed within the limits of his jurisdiction are his official acts and courts will neither direct nor restrain executive action in such cases. The rule is noninterference. But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts when these are properly challenged in an appropriate legal proceeding. The classical separation of governmental powers, whether viewed in the light of the political philosophy of Aristotle, Locke, or Montesquieu, or of the postulations of Mabini, Madison, or Jefferson, is a relative theory of government. There is more truism and actuality in interdependence than in independence and separation of powers, for as observed by Justice Holmes in a case of Philippine origin, we cannot lay down 'with mathematical precision and divide the branches into watertight compartments' not only because 'the great ordinances of the Constitution do not establish and divide fields of black and white' but also because 'even the more specific of them are found to terminate a penumbra shading gradually from one extreme to the other.' (*Springer vs. Government* [1928], 277 U. S., 189; 72 law. ed., 845, 852.) As far as the judiciary is concerned, which it holds 'neither the sword nor the purse' it is by constitutional placement the organ called upon to allocate constitutional boundaries, and to the Supreme Court is entrusted expressly or by necessary implication the obligation of determining in appropriate cases the constitutionality or validity of any treaty, ordinance, or executive order or regulation. (Sec. 2 [1], Article VIII, constitution of the Philippines.) In this sense and to this extent, the judiciary restrains the other departments of the government and this result is one of the necessary corollaries of the 'system of checks and balances' of the government, established.

"In the present case, the president is not a party to the proceeding. He is neither compelled nor restrained to act in a particular way. The Commissioner of Civil Service is the party respondent and the theory is advanced by the Government that because an investigation undertaken by him is directed by authority of the President of the Philippines, this Court has no jurisdiction over the present proceedings instituted by the petitioner, Carmen, Planas. The argument is farfetched. A mere plea that a subordinate officer of the government is acting under orders from the Chief Executive may be an important averment, but is neither decisive nor conclusive upon this Court. Like the dignity of his high office, the relative immunity of the Chief Executive from judicial interference is not in the nature of a sovereign passport for all the subordinate officials and employees of the Executive Department to the extent that at the mere invocation of the authority that it purports the jurisdiction of this Court to inquire into the validity or legality of an executive order is necessarily abated or suspended. The facts in *Severino vs. Governor-General* (supra), *Abueva vs. Wood* (supra), and *Alejandrino vs. Quezon* (supra), are different, and the doctrines laid down therein must be confined to the facts and legal environment involved and whatever general observations might have been made in elaboration of the views therein expressed but which are not essential to the determination of the issues presented are mere obiter dicta.

“While, generally, prohibition as an extraordinary legal writ will not issue to restrain or control the performance of other than judicial or quasi-judicial functions (50 C. J., 658), its issuance and enforcement are regulated by statute and in this jurisdiction it may issue to any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, whose acts are without or in excess of jurisdiction. (Secs. 516 and 226, Code of Civil Procedure.) The terms 'judicial' and 'ministerial' used with reference to 'functions' in the statute are undoubtedly comprehensive and include the challenged investigation by the respondent Commissioner of Civil Service, which investigation if unauthorized and is violative of the Constitution as contended is a fortiori without or in excess of jurisdiction. The statutory rule in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but will issue in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, 'the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.' (Dimayuga and Fajardo vs. Fernandez [1922], 43 Phil., 304, 307; Aglipay vs. Ruiz [1957], 35 Off. Gaz., 1264.) This court therefore, has jurisdiction over the instant proceedings and will accordingly proceed to determine the merits of the present controversy.”

Se arguye, sin embargo, que de permitirse la intervención judicial para deslinde constitucional o para dirimir conflictos constitucionales, ello tiene que ser en casos o procedimientos apropiados. Se dice que en el asunto de Angara la intramisión judicial era procedente y justificada porque en él la parte litigante era solo la Comisión (Tribunal) Electoral, como recurrida, y la Asamblea Nacional, como uno de los tres poderes del Estado, no era ni recurrente ni recurrida. Por analogía se insinúa también que en el asunto de Planas contra Gil el Presidente de Filipinas no era parte directa sino tan sólo el Comisionado del Servicio Civil.

El argumento es de esos que, por su sutileza, provocan una batalla de argucias hasta sobre el filo de una navaja, como se suele decir. Es verdad que en el caso de Angara la Asamblea Nacional no era parte directa porque de su inclusión no había necesidad; pero ¿cambia ello el aspecto de la cuestión? ¿Se puede negar que allí había conflicto de jurisdicciones constitucionales entre la Asamblea y la Comisión Electoral y que cuando, a instancia de parte, se invocó y pidió la intervención de esta Corte, la misma intervino y se declaró competente para hacer el deslinde constitucional y finalmente adjudicó la zona disputada a la Comisión (Tribunal) Electoral? Supóngase que una mayoría de los miembros de la Asamblea Nacional, pasando por encima de la sentencia de esta Corte, hubieran insistido en hacer efectiva la confirmación del acta de Angara y le hubieran dado un asiento en los escaños de dicha Asamblea, despojando a la Comisión Electoral de su derecho de conocer y enjuiciar la protesta de Insúa ¿hubiera ello modificado la fase fundamental del caso, haciendo constitucional lo que era anticonstitucional, y hubiera perdido este Tribunal Supremo la jurisdicción para entender del asunto? Indudablemente que no: la infracción de la Constitución sería la misma, tal vez mayor y más grave; y la jurisdicción de este Tribunal para intervenir en el conflicto, más obligada y más forzosa, a fin de mantener inviolada la suprema Ley de la nación. En otras palabras, la inhibición judicial no sería una actitud más correcta, más sana y más prudente tan sólo porque la infracción de la Constitución fuera más audaz y más agresiva. Aquí no habría medias tintas: to be or not to be, que dijo Hamlet.

Y lo propio se puede decir del asunto de Planas contra Oñil. Es verdad que el presidente no estaba nombrado como parte directa en el litigio. Pero ¿qué más da? ¿No se trataba de una orden ejecutiva expedida por directa autorización del presidente? Y así como se pudo dictar una sentencia a favor del recurrido por el fundamento de que con la expedición de la orden cuestionada el Presidente no se había extralimitado de sus facultades constitucionales y estatutorias, a sensu contrario también se hubiera podido dictar una sentencia adversa, es decir, si se hubiese tratado de un acto ejecutivo que cae fuera de las facultades conferidas al Presidente por la Constitución; y en este último caso la sentencia no hubiera sido menos derogatoria tan sólo porque hubiese estado

dirigida contra el Comisionado del Servicio Civil que actuaba por mandato directo del presidente. El que está a las maduras, también debe estar a las duras * * *.

Se nos dice, sin embargo, que el caso *ue Angara* no es la cita pertinente aplicable, sino el de *Alejandrino* contra *Quezon* (46 Jur. Fil., 87, 151), decidido en 1924. El Senador *Alejandrino* agredió a otro miembro del Senado fuera de la sala de sesiones de resultados de un debate acalorado. Con motivo del incidente la mayoría aprobó una resolución suspendiendo a *Alejandrino* por un año y privándole, además, de todas sus prerrogativas, privilegios y emolumentos durante dicho período de tiempo. *Alejandrino* planteó ante esta Corte una acción originaria pidiendo la expedición de una orden de *mandamus* o *interdicto* para que se le repusiera en su cargo con todos los derechos y privilegios anexos. Se denegó el recurso por el fundamento de que esta Corte carecía de jurisdicción para conocer del asunto.

Un somero examen del caso *Alejandrino* demuestra, sin embargo, que no tiene ninguna paridad con el que nos ocupa. Es evidente que el Senado tenía el derecho de castigar a *Alejandrino* dentro de sus facultades disciplinarias provistas por la ley orgánica—la Ley Jones. Esta era una facultad discrecional y constitucional cuyo ejercicio no podía ser regido ni revisado por ningún otro poder. Como hemos dicho más arriba, cada poder es árbitro único y exclusivo dentro de su esfera constitucional. (*Planas* contra *Gil*, 67, Phil., 62). Ninguno tiene derecho a entrometerse en la forma como se las arregla allí. Pero nuestro caso es completamente diferente. Aquí los recurridos o la mayoría de los Senadores han ejercido una facultad que constitucionalmente no les pertenece. Por tanto, han traspasado los confines de su predio constitucional, invadiendo otro; por tanto, la Resolución *Pendatun* es completamente *ultra vires*. Y no es necesario que repitamos los argumentos ya extensamente desarrollados acerca de este punto.

Todas las autoridades que se citan en la decisión de la mayoría en el asunto de *Alejandrino* tienen la misma *ratio decidendi*, el mismo *leit motif*. Se trata de casos en que los actos discutidos recaían dentro de las facultades constitucionales del poder envuelto en el litigio; de ahí la negativa del departamento judicial a intervenir, a entrometerse.

Y si examinemos los precedentes locales sobre la materia, vemos que la veta de la jurisprudencia tiene el mismo tipo, la misma naturaleza. En el asunto de *Barcelón* contra *Baker* y *Thomson* (5 Jur. Fil., 89) se declaró legal lo hecho por el Gobernador General por la razón de que caía dentro de sus poderes políticos o ejecutivos bajo la constitución.

Lo propio se hizo en los siguientes asuntos:

Forbes contra *Chuoco Tiaco* y *Crossfield*, 16 Jur. Fil., 535; Asunto de *McCulluch* *Dick*, 38 Jur. Fil., 43, 225, 240; *Severino* contra Gobernador General y Junta Provincial de Negros Occidental, 16 Jur. Fil., 369; *Abueva* contra *Wood*, 45 Jur. Fil., 643.

Al negarse esta Corte a revisar lo actuado por el Jefe Ejecutivo en los casos citados, ha tenido indudablemente en cuenta el siguiente pronunciamiento del Chief Justice Marshall en el citado asunto de *Marbury* vs. *Madison*: “The Constitution itself endows the president with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience.” De modo que, en último resultado, en tales casos se ha reconocido que el Ejecutivo ha ejercido solamente sus poderes constitucionales; nada hay en ellos que sugiera la idea de la inmunidad e irresponsabilidad por una infracción de la Constitución.

Contra la pretensión de que el departamento judicial no puede revisar los procedimientos de una Cámara legislativa en casos de extralimitación constitucional y dictar la orden correspondiente, militan varios precedentes

en la jurisprudencia americana. El más conocido y celebrado entre ellos es el asunto de Kilbourn vs. Thomsom (103 U. S. 168, Law ed., 377). En 1876 la Cámara de Representantes de los Estados Unidos aprobó una resolución disponiendo que se investigara cierta compañía en la que el gobierno federal, por medio del Secretario de la Marina, había hecho depositos improvidentes de dinero público. Se decía que la compañía estaba en quiebra y el gobierno federal era uno de los mayores acreedorss. Se alegaba, además, en la resolución que los tribunales eran impotentes para hacer algo en el caso y proteger el interés público. Se nombraba en la resolución un comité de cinco Representantes para efectuar la investigación.

En el curso de la investigación se le citó al recurrente Hallet Kilbourn subpoena duces tecum para que produjera ante el comité ciertos documentos y contestase ciertas preguntas. Kilbourn se negó a hacer lo uno y lo otro. Kilbourn fué entonces arrestado por orden del Speaker y como quiera que siguió rehusando contestar las mismas preguntas formuladas ahora por el Speaker y producir los documentos requeridos por el comité, la Cámara aprobó otra resolución disponiendo que Kilbourn fuese otra vez arrestado y detenido en la cárcel del Distrito de Columbia hasta que se aviniese a cumplir la orden contenida en las resoluciones de la Cámara de Representantes. Kilbourn no sólo insistió en su negativa, sino yue formuló una queja contra el sargento de armas de la Camara y los cinco miembros del Comité por “trespass for false imprisonment,” acusándoles de haberle arrancado de su casa mediante fuerza y detenido por 45 días en la cárcel. Elevado el asunto al Tribunal Supremo Federal, éste declaró que la resolución de investigación era anticonstitucional; que la inveotigación no tenía por objeto una acción legislative sino que era más bien para una inquisición de caracter judicial; asi que la Corte deolaró lo siguiente:

”In looking to the Preamble and Resolution under which the committee acted, before which Mr. Kilbourn refused to testify we are of opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch, of the government, because the power was in its nature clearly judicial.

“The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain. If what we have said of the division of the powers of the government among the three department be sound, this is equivalent to a declaration that no judicial power is vested in the congress or either branch of it, save in the cases specifically enumerated to which we have referred. * * *

“We are of opinion, for these reasons, that the Resolution of the House or Representatives authorizing the investigation, was in excess of the power conferred on that body by the Constitution; that the committee, therefore, had no lawful authority to require Mr. Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House, and the warrant of the Speaker, under which Mr. Kilbourn was imprisoned, are, in like manner, void for want of jurisdiction in that body, and that his imprisonment was Without any lawful authority.” (Kilbourn vs. Thompson, 103 U. S., 168; 26 Law. ed., 377.)

Finalmente, la Corte dispuso que la causa contra Thompson, el sargento de armas, se devolviera al tribunal de origen para ulteriores procedimlentos. Se estiraó el sobreseimiento con respecto a los miembros del comité bajo el principio de la libertad parlamentaria de debate que les hacía inmunes. A propósito de esto último son muy significativas las siguientes palabras de la Corte:

”It is not necessary to decide here that there, may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the Nation, or to follow the example of the Trench Assembly in assuming the functions of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from

punishment by the constitutional provision for freedom of debate." (Idem., p. 392)

Además de la precedente cita, varias decisiones de los más altos tribunales pueden citarse en apoyo de la doctrina de que "todos los funcionarios, departamentos o agendas gubernamentales están sujetos a restricción judicial cuando obran fuera de sus facultades, legales o constitucionales, y por virtud de dicha extralimitación privan a un ciudadano de sus derechos" (Osborn vs. United States Bank, 9 Wheaton [U.S.], 739; Board of Liquidation vs. McComb, 92 [U. S.], 531; United States vs. Lee, 106 U.S., 196; Virginia Cases, 114 U. S., 311; Regan vs. Farmers & Co., 154 U. S., 362; Smith vs. Ames, 169 U. S., 466; Ex parte Young, 209 U. S., 123; Philadelphia Co. vs. Stimson, 223 U. S. 605.)

Respecto de la facultad judicial para expedir, en casos apropiados, órdenes coercitivas dirigidas a funcionarios de la Legislatura, hay en la jurisprudencia americana una buena copia de autoridades. He aquí algunas de ellas;

"* * * En el asunto Ex parte Picket (24 Ala., 91) se libra el mandamiento contra el Presidente de la Cámara de Representantes para obligarle a que certificara al Interventor de Cuentas Públicas la cantidad a que tenía derecho el recurrente como miembro de la Cámara como compensación por millaje y dietas. En el asunto de State vs. Slder (31 Neb. 169), se libró el mandamiento para obligar al Presidente de la Cámara de Representantes para que abriera y publicara los resultados de la elección general. En el asunto de State vs. Mofitt (5 Ohio, 350) se declaró que procedía expedir un mandamus contra el Presidente de la Cámara de Representantes para obligarle que certificara la elección y nombramiento de funcionarios. En el asunto de Wolfe vs. McCaull (76 Va., 87) se expidió el mandamiento para obligar al Archivero de las Nóminas de la Cámara de Representantes a que imprimiera y publicara un proyecto de ley aprobado por la Legislatura y, a solicitud, que facilitara copia del mismo propiamente certificada. (Véanse también los asuntos de Kilbourn vs. Thompson, 103 U. S., 168; State vs. Gilchrist, 64 Fla., 41; People vs. Marton, 156 N. Y., 136.)" (Alejandrino contra Quezon, 46 Jur. Fil., 87, 148, 149.)

De lo expuesto resulta evidente que esta Corte tiene facultad para dictar la sentencia y expedir el interdicto que se solicita. La orden irá dirigida no contra el Senado de Filipinas, entidad abstracta que nada ha hecho contra la Constitución. La orden restringente irá dirigida contra los recurridos en cuanto ellos intentan hacer efectiva una resolución que es ilegal, que es anticonstitucional, lo mismo que se hizo en el asunto de Kilbourn. Se les restringe y cohibe como se les restringiría y cohibiría si, por ejemplo, en vez de la Resolución Pendatum, hubieran aprobado otra resolución mandando a la cárcel a los recurrentes hasta que el Tribunal Electoral resuelva la cuestión de sus actas. ¿Habría alguien que sostuviera que si en tal caso vinieran a esta Corte los afectados para pedir el adecuado remedio contra el atropello, esta Corte no podría concederlo bajo la teoría de la separación de poderes? Luego la cuestión se reduce a una de grado, de tamaño de la transgresión constitucional; pero es obvio que nuestra jurisdicción y competencia no queda condicionada por el volumen de la transgresión. ¿Y quién diría en tal caso que el Senado de Filipinas ha sido el sujeto de la orden de interdicto, con grave desdoro de sus altos prestigios como uno de los tres poderes del Estado?

Puesto que la acción en el presente caso va dirigida no contra el Senado como corporación o institución, sino contra una mayoría de sus miembros como personas, como individuos, si bien en su concepto de Senadores, dicho se está que tenemos competencia para conceder el recurso, no sólo por las razones constitucionales ya expuestas, sino porque esta claramente reconocida y definida dicha competencia en nuestros estatutos: anteriormente en los artículos 226 y 516 de la Ley No. 190 (Cód. de Proc. Civ.), y ahora en la regla 67, secciones 2 y 4, Reglamento de los tribunales. Estas disposiciones legales prescriben que el mandamiento de inhibición (prohibition) puede expedirse a "una corporación, junta, o persona, en el ejercicio de sus funciones judiciales o ministeriales, siempre que se demuestre que carecían de competencia o se han extralimitado de ella en las actuaciones que hayan practicado" (Planas contra Gil ut supra). Sin embargo, se arguye que los recurridos como Senadores no ejercen funciones judiciales ni ministeriales, sino legislativas; luego la regla no es aplicable a ellos.

Pero es evidente que en el presente caso la función de que se trata no es de carácter legislativo sino ministerial; apenas es necesario decir que la Resolución Pendatun no es un acto legislativo. Bajo la Constitución y los estatutos el derecho de un miembro electo del Congreso a ser admitido y a ocupar su asiento es de naturaleza ministerial, imperativa. La Ley No. 725 del Commonwealth, aprobada por el pasado Congreso para implementar la Ley Electoral con vista a las elecciones nacionales del pasado 23 de Abril, dice en parte lo siguiente:

"ART. 11. La Comisión de Elecciones hará el escrutinio de los resultados para Senadores tan pronto como se hayan recibido las actas de cada provincia y ciudad, pero no después del veinte de mayo de mil novecientos cuarenta y seis. Serán proclamados elegidos los dieciseis candidatos inscritos que obtuvieron el mayor número de votos para el cargo de Senador. En caso de que apareciere de los resultados del escrutinio de los votos para Senadores que dos o más candidatos han obtenido el mismo número de votos para el dSeirno sexto puesto, la Comisión de Elecciones, después de hacer constar este hecho en el acta correspondiente, celebrará otra sesión pública, previa notificación con tres días de antelación a todos los candidatos empatados, para que ellos o sus representantes debidamente autorizados puedan estar presentes si así lo desearan, en la cual procederá al sorteo de los candidatos empatados y proclamará al candidato que saliere favorecido por la suerte. El candidato así proclamado tendrá derecho a tomar posesión del cargo del mismo modo que si hubiere sido elegido por pluralidad de votos. Acto seguido, la Comisión de Elecciones levantará acta del procedimiento seguido en el sorteo, de su resultado y de la proclamación subsiguiente. Se enviarán copias certificadas de dicha acta por correo, certificado al Secretario del Senado y a cada uno de los candidatos empatados."

"ART. 12. * * * The candidates for Member of the House of Representatives and those for Senator who have been proclaimed elected by the respective Board of Cavassers and the Commission on elections shall assume office and shall hold regular session for the year 1946 on May 25, 1946 (las bastardillas son nuestras).

Si bajo estas disposiciones legales los recurrentes tienen el derecho de asumir el cargo, es obvio que los demás aenadores, entre ellos los recurridos, tienen el correlativo deber ministerial de no impedirles el ejercicio de ese derecho, o dicho de otro modo, el correlativo deber ministerial de admitirles para que tomen posesión de sus cargos a la sola presentación de sus credenciales que en este caso viene a ser la proclama expedida por la Comisión sobre Elecciones declarandolos electos (Delegado Roxas, debates en la Asamblea Constituyente, ut supra). Se dice que la frase *shall assume office*, con ser imperativa, no impone una obligación específica de admitir a cualquier miembro electo, sino que es tan sólo un mandamiento, un directive al legislador electo para que tome posesión de su cargo inmediatamente, como si un candidato triunfante que, es de presumir, se presentó voluntariamente candidato y a lo mejor gastó una fortuna para promover su elección, necesitara de ese úkase legislativo para asumir su oficio. Pero concedamos por un momento, arguyendo, que esa disposición legal no tiene más que el significado de una especie de conscripción civil, todavía cabe preguntar: ¿cómo podría el legislador electo asumir forzosamente (*shall*) su cargo, si, por otro lado, una mayoría de sus compañeros en cónclave tuvieran la facultad discrecional—que puede degenerar en arbitraria—de negarle el usiento, siquiera sea con carácter temporal? ¿No sería ello claramente un absurdo, un contrasentido? Luego la conclusión lógica y natural es que esa frase imperativa es de doble vía, esto es, tanto para admitir al miembro electo como para que este asuma el cargo.

Se apunta el temor de que la intervención judicial en el caso que nos ocupa pueda dar lugar a una grave consecuencia—la de que una orden adversa sea desobedecida por los recurridos, suscitandose por tal motivo un conflicto de poderes. Pero, aparte de que el debar—máxime si está impuesto por la Constitución y las leyes—se tiene que cumplir rigurosamente por penoso que fuese sin consideración a las consecuencias, parece impropio e injusto presumir que los recurridos sean capaces, en un momento dado, de desplazar las cuestiones que entraña la presente controversia del elevado nivel en que deben discutirse y resolverse, en medio de una atmósfera de absoluta impersonalidad y objetividad, libre de los miasmas de la pasión y suspicacia. Y no se diga, fulanizando ostensiblemente la cuestión, que cuando la judicatura, en el apropiado ejercicio de su facultad de interpretar la

Constitución y los estatutos, dicta un fallo adverso a ciertos intereses y a ciertos hombres pertenecientes a otro poder del Estado, humilla y empequeñece con ello a ese poder, colocándolo en condición inferior y subalterna. En los grandes conflictos y disputas sobre la cosa pública lo que, en verdad, empequeñece y deslustra no es el contratiempo y ravés que se sufre—incidente inevitable en toda noble lid por la razón, la verdad y la justicia—sino la falta de esa serena dignidad, de ese sentido sobrio de propia inhibición y propio dominio para aceptar y sufrir el revés, de todo eso que es la mejor piedra de toque de la madurez política y de las virtudes públicas en un régimen de carácter popular y democrático. Los hombres van y vienen, pasan con sus miserias y sus disputas en la interminable caravana del tiempo; las instituciones quedan, y eso es lo que importa salvar a toda costa por encima de las pasiones y caprichos transeúntes del momento.

Si esta Corte tiene, según la Constitución, facultad para conceder el remedio solicitado, es de suponer que los recurridos acatarán el fallo que se dicte, pues son hombres de orden y de ley, y serán los primeros en dar el ejemplo de cumplir los mandatos de la Constitución, interpretados y aplicados por la judicatura; pero si—lo que para nosotros es imposible que ocurra—escudándose tras sus privilegios, llegaren al extremo de cometer desacato, que cada cual asuma su responsabilidad ante su conciencia, ante el país y ante la historia. Esta Corte habrá cumplido solamente con su deber, sin miedo y sin ravor, y en la forma mejor que le haya sido dable hacerlo en la medida de sus luces y alcances.

En esta jurisdicción tenemos un precedente típico, claro y terminante de orden coercitiva dirigida por el departamento judicial al departamento ejecutivo del gobierno. Nos referimos al asunto de Concepción contra Paredes (42 Jur. Fil., 630) en el cual se trataba de una solicitud de mandamiento de inhaibición ordenando al recurrido Secretario de Justicia que desistiera de poner en vigor las disposiciones de la Ley No. 2941 que exigía a los jueces de primera instancia que echasen suertes cada cinco años para el cambio de distritos. Esta Corte declaró que la ley popularmente conocida por ley de la “lotería judicial” era anticonstitucional. Se concedió, por tanto, el mandamiento de prohibición, haciéndose definitivo el interdicto preliminar expedido.

Sólo nos queda por considerar el argumento deprimente, desalentador de que el caso que nos ocupa no tiene remedio ni bajo la Constitución ni bajo las leyes ordinarias. A los recurrentes se les dice que no tienen mas que un recurso: esperar las elecciones y plantear directamente la cuestión ante el pueblo elector. Si los recurrentes tienen razón, el pueblo les reivindicará eligiéndoles o elevando a su partido al poder, repudiando, en cambio, a los recurridos o a su partido. Algunas cosas se podrían decir acerca de este argumento. Se podría decir, por ejemplo, que el remedio no es expedito ni adecuado porque la mayoría de los recurridos han sido elegidos para un período de seis años así que no se les podrá exigir ninguna responsabilidad por tan largo tiempo. Se podría decir también que en una elección política entran muchos factores, y es posible que la cuestión que se discute hoy, con ser tan férvida y tan palpitante, quede, cuando llegue el caso, obscurecida por otros “issues” más presionantes y decisivos. También se podría decir que, independientemente de la justicia de su causa, un partido minoritario siempre lucha con desventaja contra el partido mayoritario.

Pero, a nuestro juicio, la mejor contestación al argumento es que no cabe concebir que los redactors de la Constitución filipina hayan dejado en medio de nuestro sistema de gobierno un peligroso vacío en donde quedan paralizados los resortes de la Constitución y de la ley, y el ciudadano queda inerme, impotente frente a lo que él considera flagrante transgresión de sus derechos. Los redactores de la Constitución conocían muy bien nuestro sistema de gobierno—sistema presidencial. Sabían muy bien que éste no tiene la flexibilidad del tipo inglés—el parlamentario. En Inglaterra y en los países que siguen su sistema hay una magnífica válvula de seguridad política; cuando surge una grave crisis, de esas que sacuden los cimientos de la nación, el parlamento se disuelve y se convocan elecciones generales para que el pueblo decida los grandes “issues” del día. Así se consuman verdaderas revoluciones, sin sangre, sin violencia. El sistema presidencial no tiene esa válvula. El período que

media de elección a elección es inflexible. Entre nosotros, por ejemplo, el período es de seis años para el Senado, y de cuatro años para la Cámara de Representantes y los gobiernos provinciales y municipales. Solamente se celebran elecciones especiales para cubrir vacantes que ocurran entre unas elecciones generales y otras. Se comprenderá fácilmente que bajo un sistema así es harto peligroso, es jugar con fuego el posibilitar situaciones donde el individuo y el pueblo no puedan buscar el amparo de la Constitución y de las leyes, bajo procesos ordenados y expeditos, para proteger sus derechos.

En resumen, diremos lo siguiente;

Tenemos una Constitución escrita que representa el genio político y social de nuestro pueblo, que encarna nuestra historia, nuestras tradiciones, nuestra civilización y cultura influida por las más grandes civilizaciones y culturas conocidas en el mundo. Esa Constitución se escribió no sólo para el Commonwealth, sino para la República: está hecha para perdurar y sobrevivir a todas las crisis y vicisitudes. Sobrevivió casi milagrosamente a la peor de éstas—la ocupación japonesa. Es un formidable instrumento de libertad y democracia. Su modelo más cercano es la Constitución americana, pero en ciertos aspectos es una superación del modelo. Uno de sus aspectos más originales y progresivos es indudablemente la creación del Tribunal Electoral. Esta reforma constituye el valiente reconocimiento de una dura realidad, al propio tiempo que un enérgico remedio.

Pero en las constituciones la letra no es el todo, ni siquiera lo principal. Lo importante, lo fundamental es el espíritu, el carácter del pueblo; son las prácticas, las costumbres, los hábitos políticos que vivifican e implementan la letra escrita que es inorgánica e inerte. Exceptuando el paréntesis trágico de la guerra, nuestra Constitución lleva unos ocho años de vigencia. En ese breve período de tiempo se ha formado en su derredor una limitada jurisprudencia, encaminada a robustecerla y expandirla como instrumento de libertad y democracia. Los casos de Angara y Planas, tan copiosamente comentados en esta modesta disidencia, son típicamente representativos de esa magnífica tendencia. La cuestión ahora es si ésta ha de poder continuar sin estorbos, sin trabas, o ha de sufrir un serio revés en su marcha ascendente. Nuestro sentir es que se debe permitir el ordenado desenvolvimiento de la Constitución en toda su anchura, bajo los amplísimos auspicios de la libertad, en términos y perspectivas que hagan de ella la formidable herramienta de democracia y justicia que debe ser.

¡Ojalá el resultado del presente asunto no sea parte para estorbar ese desenvolvimiento!

Case dismissed.

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