

PABLO C. SANIDAD AND PABLITO V. SANIDAD, PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. L-44640. October 12, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

The capital question raised in these prohibition suits with preliminary injunction relates to the power of the incumbent President of the Philippines to propose amend-ments to the present Constitution in the absence of the interim National Assembly which has not been convened.

On September 2, 1976, President Ferdinand E. Marcos issued Presidential Decree No. 991 calling for a national referendum on October 16, 1976 for the Citizens Assemblies ("barangays") to resolve, among other things, the issues of martial law, the interim assembly, its replacement, the powers of such replacement, the period of its existence, the length of the period for the exercise by the President of his present powers.[1]

Twenty days after or on September 22, 1976, the President issued another related decree, Presidential Decree No. 1031, amending the previous Presidential Decree No. 991, by declaring the provisions of Presidential Decree No. 229 providing for the manner of voting and canvass of votes in "barangays" (Citizens Assemblies) applicable to the national referendum-plebiscite of October 16, 1976. Quite relevantly, Presidential Decree No. 1031 repealed inter alia, Section 4, of Presidential Decree No. 991, the full text of which (Section 4) is quoted in the footnote below.[2]

On the same date of September 22, 1976, the President issued Presidential Decree No. 1033, stating the questions to be submitted to the people in the referendum-plebiscite on October 16, 1976. The Decree recites in its "whereas" clauses that the people's continued opposition to the convening of the interim National Assembly evinces their desire to have such body abolished and replaced thru a constitutional amendment, providing for a new interim legislative body, which will be submitted directly to the people in the referendum-plebiscite of October 16.

The questions ask, to wit:

"(1) Do you want martial law to be continued?

(2) Whether or not you want martial law to be continued, do you approve the following amendments to the Constitution? For the purpose of the second question, the referendum shall have the effect of a plebiscite within the contemplation of Section 2 of Article XVI of the Constitution.

PROPOSED AMENDMENTS:

1. There shall be, in lieu of the interim National Assembly, an interim Batasang Pambansa. Members of the interim Batasang Pambansa which shall not be more than 120, unless otherwise provided by law, shall include the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by

the incumbent President from the members of the Cabinets Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio while the sectors shall be determined by law. The number of representatives from each region or sector and the manner of their election shall be prescribed and regulated by law.

2. The interim Batasang Pambansa shall have the same powers and its members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the interim National Assembly and the regular National Assembly and the members thereof. However, it shall not exercise the power provided in Article VIII, Section 14 (1) of the Constitution.

3. The incumbent President of the Philippines shall, within 30 days from the election and selection of the members, convene the interim Batasang Pambansa and preside over its sessions until the Speaker shall have been elected. The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions and likewise he shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty five Constitution and the powers vested in the President and the Prime Minister under this Constitution.

4. The President (Prime Minister) and his Cabinet shall exercise all the powers and functions, and discharge the responsibilities of the regular President (Prime Minister) and his Cabinet, and shall be subject only to such disqualifications as the President (Prime Minister) may prescribe. The President (Prime Minister) if he so desires may appoint a Deputy Prime Minister or as many Deputy Prime Ministers as he may deem necessary.

5. The incumbent President shall continue to exercise legislative powers until martial law shall have been lifted.

6. Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land.

7. The barangays and sanggunians shall continue as presently constituted but their functions, powers, and composition may be altered by law.

Referenda conducted thru the barangays and under the supervision of the Commission on Elections may be called at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest.

8. All provisions of this Constitution not inconsistent with any of these amendments shall continue in full force and effect.

9. These amendments shall take effect after the incumbent President shall have proclaimed that they have been ratified by a majority of the votes cast in the referendum-plebiscite."

The Commission on Elections was vested with the exclusive supervision and control of the October 1976 National Referendum-Plebiscite.

On September 27, 1976, PABLO C. SANIDAD and PABLITO V. SANIDAD, father and son, commenced L-44640 for Prohibition with Preliminary Injunction seeking to enjoin the Commission on Elections from holding and conducting the Referendum-Plebiscite on October 16; to declare without force and effect Presidential Decree Nos. 991 and 1033, insofar as they propose amendments to the Constitution, as well as Presidential Decree No. 1031, insofar as it directs the Commission on Elections to supervise, control, hold, and conduct the

Referendum-Plebiscite scheduled on October 16, 1976.

Petitioners contend that under the 1935 and 1973 Constitutions there is no grant to the incumbent President to exercise the constituent power to propose amendments to the new Constitution. As a consequence, the Referendum-Plebiscite on October 16 has no constitutional or legal basis.

On October 5, 1976, the Solicitor General filed the comment for respondent Commission on Elections. The Solicitor General principally maintains that petitioners have no standing to sue; the issue raised is political in nature, beyond judicial cognizance of this Court; at this state of the transition period, only the incumbent President has the authority to exercise constituent power; the referendum-plebiscite is a step towards normalization.

On September 30, 1976, another action for Prohibition with Preliminary Injunction, docketed as L-44684, was instituted by VICENT M. GUZMAN, a delegate to the 1971 Constitutional Convention, asserting that the power to propose amendments to, or revision of, the Constitution during the transition period is expressly conferred on the interim National Assembly under Section 16, Article XVII of the Constitution.[3]

Still another petition for Prohibition with Preliminary Injunction was filed on October 5, 1976 by RAUL M. GONZALES, his son RAUL, JR., and ALFREDO SALAPANTAN, docketed as L-44714, to restrain the implementation of Presidential Decrees relative to the forthcoming Referendum-Plebiscite of October 16.

These last petitioners argue that even granting him legislative powers under Martial Law, the incumbent President cannot act as a constituent assembly to propose amendments to the Constitution; a referendum-plebiscite is untenable under the Constitutions of 1935 and 1973; the submission of the proposed amendments in such a short period of time for deliberation renders the plebiscite a nullity; to lift Martial Law, the President need not consult the people via referendum; and allowing 15-year olds to vote would amount to an amendment of the Constitution, which confines the right of suffrage to those citizens of the Philippines 18 years of age and above.

We find the petitions in the three entitled cases to be devoid of merit.

I

Justiciability of question raised.

1. As a preliminary resolution, We rule that the petitioners in L-44640 (Pablo C. Sanidad and Pablito V. Sanidad) possess locus standi to challenge the constitutional premise of Presidential Decree Nos. 991, 1031, and 1033. It is now an ancient rule that the valid source of a statute - Presidential Decrees are of such nature - may be contested by one who will sustain a direct injury as a result of its enforcement. At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds.[4] The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes.[5] Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions.[6] The interest of the aforementioned petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds. Moreover, as regards taxpayer's suits, this Court enjoys that open discretion to entertain the same or not.[7] For the present case, We deem it sound to exercise that discretion affirmatively so that the authority upon which the disputed Decrees are predicated may be inquired into.
2. The Solicitor General would consider the question at bar as a pure political one, lying outside the domain of judicial review. We disagree. The amending process, both as to proposal and ratification, raises a judicial question.[8] This is especially true in cases where the power of the Presidency to initiate the amend-ing

process by proposals of amendments, a function normally exercised by the legislature, is seriously doubted. Under the terms of the 1973 Constitution, the power to propose amendments to the Constitution resides in the interim National Assembly during the period of transition (Sec. 15, Transitory Provisions). After that period, and the regular National Assembly in its active session, the power to propose amendments becomes ipso facto the prerogative of the regular National Assembly (Sec. 1, pars. 1 and 2 of Art. XV I, 1973 Constitution). The normal course has not been followed. Rather than calling the interim National Assembly to constitute itself into a constituent assembly, the incumbent President undertook the proposal of amendments and submitted the proposed amendments thru Presidential Decree 1033 to the people in a Referendum-Plebiscite on October 16. Unavoidably, the regularity of the procedure for amendments, written in lambent words in the very Constitution sought to be amended, raises a contestable issue. The implementing Presidential Decree Nos. 991, 1031, and 1033, which commonly purport to have the force and effect of legislation are assailed as invalid, thus the issue of the validity of said Decrees is plainly a justiciable one, within the competence of this Court to pass upon. Section 2 (2), Article X of the new Constitution provides: "All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, executive agreement, or law may be declared unconstitutional without the concurrence of at least ten Members. * * *." The Supreme Court has the last word in the construction not only of treaties and statutes, but also of the Constitution itself.[9] The amending, like all other powers organized in the Constitution, is in form a delegated and hence a limited power, so that the Supreme Court is vested with that authority to determine whether that power has been discharged within its limits.

Political questions are neatly associated with the wisdom, not the legality of a particular act. Where the vortex of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable or non-political. What is in the heels of the Court is not the wisdom of the act of the incumbent President in pro-posing amendments to the Constitution, but his constitutional authority to perform such act or to assume the power of a constituent assembly. Whether the amending process confers on the President that power to propose amendments is therefore a downright justiciable question. Should the contrary be found, the actuation of the President would merely be a brutum fulmen. If the Constitution provides how it may be amended, the judiciary as the interpreter of that Constitution, can declare whether the procedure followed or the authority assumed was valid or not.[10]

We cannot accept the view of the Solicitor General, in pursuing his theory of non-justiciability, that the question of the President's authority to propose amendments and the regularity of the procedure adopted for submission of the proposals to the people ultimately lie in the judgment of the latter. A clear Descartes fallacy of vicious circle. Is it not that the people themselves, by their sovereign act, provided for the authority and procedure for the amending process when they ratified the present Constitution in 1973? Whether, therefore, that constitutional provision has been followed or not is indisputably a proper subject of inquiry, not by the people themselves - of course - who exercise no power of judicial review, but by the Supreme Court in whom the people themselves vested that power, a power which includes the competence to determine whether the constitutional norms for amendments have been observed or not. And, this inquiry must be done a priori not a posteriori, i.e., before the submission to and ratification by the people.

Indeed, the precedents evolved by the Court on prior constitutional cases underline the preference of the Court's majority to treat such issue of Presidential role in the amending process as one of non-political impression. In the Plebiscite Cases,[11] the contention of the Solicitor General that the issue on the legality of Presidential Decree No. 73 "submitting to the Filipino people (on January 15, 1973) for ratification or rejection the Constitution of the Republic of the Philippines proposed by the 1971 Constitutional Convention and appropriating funds therefor, " is a political one, was rejected and the Court unanimously considered the issue as justiciable in nature. Subsequently, in the Ratification Cases[12] involving the issue of whether or not the validity of Presidential

Proclamation No. 1102, "announcing the Ratification by the Filipino people of the Constitution proposed by the 1971 Constitutional Convention," partakes of the nature of a political question, the affirmative stand of the Solicitor General was dismissed, the Court ruled that the question raised is justiciable. Chief Justice Concepcion, expressing the majority view, said, "(T)hus, in the aforementioned plebiscite cases, We rejected the theory of the respondents therein that the question whether Presidential Decree No. 73 calling a plebiscite to be held on January 15, 1973, for the ratification or rejection of the proposed new Constitution, was valid or not, was not a proper subject of judicial inquiry because, they claimed, it partook of a political nature, and We unanimously declared that the issue was a justiciable one. With identical unanimity, We overruled the respondents' contention in the 1971 habeas corpus cases, questioning Our authority to determine the constitutional sufficiency of the factual bases of the Presidential proclamation suspending the privilege of the writ of habeas corpus on August 21, 1971, despite the opposite view taken by this Court in *Barcelon vs. Baker* and *Montenegro vs. Castañeda*, insofar as it adhered to the former case, which view We, accordingly, abandoned and refused to apply. For the same reason, We did not apply and expressly modified, in *Gonzales vs. Commission on Elections*, the political-question theory adopted in *Mabanag vs. Lopez Vito*." [13] The return to *Barcelon vs. Baker* and *Mabanag vs. Lopez Vito*, urged by the Solicitor General, was decisively refused by the Court. Chief Justice Concepcion continued: "The reasons adduced in support thereof are, however, substantially the same as those given in support of the political question theory advanced in said habeas corpus and plebiscite cases, which were carefully considered by this Court and found by it to be legally unsound and constitutionally untenable. As a consequence, Our decisions in the aforementioned habeas corpus cases partakes of the nature and effect of a stare decisis which gained added weight by its virtual reiteration."

II

The amending process as laid out in the new Constitution.

1. Article XVI of the 1973 Constitution on Amendments ordains:

"SECTION 1. (1) Any amendment to, or revision of, this Constitution may be proposed by the National Assembly upon a vote of three-fourths of all its Members, or by a constitutional convention.

(2) The National Assembly may, by a vote of two-thirds of all its Members, call a constitutional convention or, by a majority vote of all its Members, submit the question of calling such a convention to the electorate in an election.

SECTION 2. Any amendment to, or revision of, this Constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not later than three months after the approval of such amendment or revision."

In the present period of transition, the interim National Assembly instituted in the Transitory Provisions is conferred with that amending power. Section 15 of the Transitory Provisions reads:

"SECTION 15. The interim National Assembly, upon special call by the interim Prime Minister, may, by a majority vote of all its Members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof."

There are, therefore, two periods contemplated in the constitutional life of the nation, i.e., period of normalcy and period of transition. In times of normalcy, the amend-ing process may be initiated by the proposals of the (1) regular National Assembly upon a vote of three-fourths of all its members; or (2) by a Constitutional Convention called by a vote of two-thirds of all the Members of the National Assembly. However the calling of a Constitutional Convention may be submitted to the electorate in an election voted upon by a majority vote of all

the members of the National Assembly. In times of transition, amendments may be proposed by a majority vote of all the Members of the interim National Assembly upon special call by the interim Prime Minister.

2. This Court in *Aquino v. COMELEC*,^[14] had already settled that the incumbent President is vested with that prerogative of discretion as to when he shall initially convene the interim National Assembly. Speaking for the majority opinion in that case, Justice Makasiar said: "The Constitutional Convention intended to leave to the President the determination of the time when he shall initially convene the interim National Assembly, consistent with the prevailing conditions of peace and order in the country." Concurring, Justice Fernandez, himself a member of that Constitutional Convention, revealed: "(W)hen the Delegates to the Constitutional Convention voted on the Transitory Provisions, they were aware of the fact that under the same, the incumbent President was given the discretion as to when he could convene the interim National Assembly; it was so stated plainly by the sponsor, Delegate Yaneza; as a matter of fact, the propose that it be convened 'immediately', made by Delegate Pimentel (V), was rejected."^[15] The President's decision to defer the convening of the interim National Assembly soon found support from the people themselves. In the plebiscite of January 10-15, 1973, at which the ratification of the 1973 Constitution was submitted, the people voted against the convening of the interim National Assembly. In the referendum of July 24, 1973, the Citizens Assemblies ("barangays") reiterated their sovereign will to withhold the convening of the interim National Assembly. Again, in the referendum of February 27, 1975, the proposed question of whether the interim National Assembly shall be initially convened was eliminated, because some of the members of Congress and delegates of the Constitutional Convention, who were deemed automatically members of the interim National Assembly, were against its inclusion since in that referendum of January, 1973, the people had already resolved against it.

3. In *sensu strictiore*, when the legislative arm of the state undertakes the proposals of amendment to a Constitution, that body is not in the usual function of lawmaking. It is not legislating when engaged in the amending process.^[16] Rather, it is exercising a peculiar power bestowed upon it by the fundamental charter itself. In the Philippines, that power is provided for in Article XVI of the 1973 Constitution (for the regular National Assembly) or in Section 15 of the Transitory Provisions (for the interim National Assembly). While ordinarily it is the business of the legislating body to legislate for the nation by virtue of constitutional conferment, amending of the Constitution is not legislative in character. In political science a distinction is made between constitutional content of an organic character and that of a legislative character. The distinction, however, is one of policy, not of law.^[17] Such being the case, approval of the President of any proposed amendment is a misnomer.^[18] The prerogative of the President to approve or disapprove applies only to the ordinary cases of legislation. The President has nothing to do with proposition or adoption of amendments to the Constitution.^[19]

III

Concentration of Powers in the President during crisis government.

1. In general, the governmental powers in crisis government - the Philippines is a crisis government today - are more or less concentrated in the President.^[20] According to Rossiter, "(t)he concentration of government power in a democracy faced by an emergency is a corrective to the crisis inefficiencies inherent in the doctrine of the separation of powers. In most free states it has generally been regarded as imperative that the total power of the government be parceled out among three mutually independent branches - executive, legislature, and judiciary. It is believed to be destructive of constitutionalism if any one branch should exercise any two or more types of power, and certainly a total disregard of the separation of powers is, as Madison wrote in the *Federalist*, No. 47, 'the very definition of tyranny.' In normal times the separation of powers forms a distinct obstruction to arbitrary governmental action. By this same token, in abnormal times it may form an insurmountable barrier to a decisive emergency action in behalf of the state and its independent existence. There are moments in the life of any government when all powers must work together in unanimity of purpose and action, even if this means the temporary union of executive, legislative, and judicial power in the hands of

one man. The more complete the separation of powers in a constitutional system, the more difficult and yet the more necessary will be their fusion in time of crisis. This is evident in a comparison of the crisis potentialities of the cabinet and presidential systems of government. In the former the all-important harmony of legislature and executive is taken for granted; in the latter it is neither guaranteed nor to be confidently expected. As a result, cabinet is more easily established and more trustworthy than presidential dictatorship. The power of the state in crisis must not only be concentrated and expanded; it must also be freed from the normal system of constitutional and legal limitations.[21] John Locke, on the other hand, claims for the executive in its own right a broad discretion capable even of setting aside the ordinary laws in the meeting of special exigencies for which the legislative power had not provided.[22] The rationale behind such broad emergency powers of the Executive is the release of the government from "the paralysis of constitutional restraints" so that the crisis may be ended and normal times restored.

2. The presidential exercise of legislative powers in times of martial law is now a conceded valid act. That sun clear authority of the President is saddled on Section 3 (pars. 1 and 2) of the Transitory Provisions, thus:[23]

"The incumbent President of the Philippines shall initially convene the interim National Assembly and shall preside over its sessions until the interim Speaker shall have been elected. He shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty-five Constitution and the powers vested in the President and the Prime Minister under this Constitution until he calls upon the interim National Assembly to elect the interim President and the interim Prime Minister, who shall then exercise their respective powers vested by this Constitution.

All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

"It is unthinkable," said Justice Fernandez, a 1971 Constitutional Convention delegate, "that the Constitutional Convention, while giving to the President the discretion when to call the interim National Assembly to session, and knowing that it may not be convened soon, would create a vacuum in the exercise of legislative powers. Otherwise, with no one to exercise the lawmaking powers, there would be paralyzation of the entire governmental machinery." [24] Paraphrasing Rossiter, this is an extremely important factor in any constitutional dictatorship which extends over a period of time. The separation of executive and legislature ordained in the Constitution presents a distinct obstruction to efficient crisis government. The steady increase in executive power is not too much a cause for worry as the steady increase in the magnitude and complexity of the problems the President has been called upon by the Filipino people to solve in their behalf, which involve rebellion, subversion, secession, recession, inflation, and economic crisis - a crisis greater than war. In short, while conventional constitutional law just confines the President's power as Commander-in-Chief to the direction of the operation of the national forces, yet the facts of our political, social, and economic disturbances had convincingly shown that in meeting the same, indefinite power should be attributed to the President to take emergency measures.[25]

IV

Authority of the incumbent President to propose amendments to the Constitution.

1. As earlier pointed out, the power to legislate is constitutionally consigned to the interim National Assembly during the transition period. However, the initial convening of that Assembly is a matter fully addressed to the judgment of the incumbent President. And, in the exercise of that judgment, the President opted to defer the convening of that body in utter recognition of the people's preference. Likewise, in the period of transition, the power to propose amendments to the Constitution lies in the interim National Assembly upon special call by

the President (Sec. 15 of the Transitory Provisions). Again, harking to the dictates of the sovereign will, the President decided not to call the interim National Assembly. Would it then be within the bounds of the Constitution and of law for the President to assume that constituent power of the interim Assembly vis-a-vis his assumption of that body's legislative functions? The answer is yes. If the President has been legitimately discharging the legislative functions of the interim Assembly, there is no reason why he cannot validly discharge the function of that Assembly to propose amendments to the Constitution, which is but adjunct, although peculiar, to its gross legislative power. This, of course, is not to say that the President has converted his office into a constituent assembly of that nature normally constituted by the legislature. Rather, with the interim National Assembly not convened and only the Presidency and the Supreme Court in operation, the urges of absolute necessity render it imperative upon the President to act as agent for and in behalf of the people to propose amendments to the Constitution. Parenthetically, by its very constitution, the Supreme Court possesses no capacity to propose amendments without constitutional infractions. For the President to shy away from that actuality and decline to undertake the amending process would leave the governmental machinery at a stalemate or create in the powers of the State a destructive vacuum, thereby impeding the objective of a crisis government "to end the crisis and re-store normal times." In these parlous times, that Presidential initiative to reduce into concrete forms the constant voices of the people reigns supreme. After all, constituent assemblies or constitutional conventions, like the President now, are mere agents of the people.[26]

2. The President's action is not a unilateral move. As early as the referendums of January 1973 and February 1975, the people had already rejected the calling of the interim National Assembly. The Lupong Tagapagpaganap of the Katipunan ng mga Sanggunian, the Pambansang Katipunan ng mga Barangay, and the Pambansang Katipunan ng mga Kabataang Barangay, representing 42,000 barangays, about the same number of Kabataang Barangay organizations, Sanggunians in 1,458 municipalities, 72 provinces, 3 sub-provinces, and 60 cities had informed the President that the prevailing sentiment of the people is for the abolition of the interim National Assembly. Other issues concerned the lifting of martial law and amendments to the Constitution.[27] The national organizations of Sangguniang Bayan presently proposed to settle the issues of martial law, the interim Assembly, its replacement, the period of its existence, the length of the period for the exercise by the President of its present powers in a referendum to be held on October 16.[28] The Batasang Bayan (legislative council) created under Presidential Decree 995 of September 10, 1976, composed of 19 cabinet members, 9 officials with cabinet rank, 91 members of the Lupong Tagapagpaganap (executive committee) of the Katipunan ng mga Sangguniang Bayan voted in session to submit directly to the people in a plebiscite on October 16, the previously quoted proposed amendments to the Constitution, including the issue of martial law.[29] Similarly, the "barangays" and the "sang-gunians" endorsed to the President the submission of the proposed amendments to the people on October 16. All the foregoing led the President to initiate the proposal of amendments to the Constitution and the subsequent issuance of Presidential Decree No. 1033 on September 22, 1976 submitting the questions (proposed amendments) to the people in the National Referendum-Plebiscite on October 16.

V

The People as Sovereign.

1. Unlike in a federal state, the location of sovereignty in a unitary state is easily seen. In the Philippines, a republican and unitary state, sovereignty "resides in the people and all government authority emanates from them.[30] In its fourth meaning, Savigny would treat "people" as "that particular organized assembly of individuals in which, according to the Constitution, the highest power exists." [31] This is the concept of popular sovereignty. It means that the constitutional legislator, namely, the people, is sovereign.[32] In consequence, the people may thus write into the Constitution their convictions on any subject they choose in the absence of express constitutional prohibition.[33] This is because, as Holmes said, the Constitution is an experiment, as all life is an experiment." [34] "The necessities of orderly government," wrote Rottschaefer, "do

not require that one generation should be permitted to permanently fetter all future generations." A constitution is based, therefore, upon a self-limiting decision of the people when they adopt it.[35]

12. The October 16 referendum-plebiscite is a resounding call to the people to exercise their sovereign power as constitutional legislator. The proposed amendments, as earlier discussed, proceed not from the thinking of a single man. Rather, they are the collated thoughts of the sovereign will reduced only into enabling forms by the authority who can presently exercise the powers of government. In equal vein, the submission of those proposed amendments and the question of martial law in a referendum-plebiscite expresses but the option of the people themselves implemented only by the authority of the President. Indeed, it may well be said that the amending process is a sovereign act, although the authority to initiate the same and the procedure to be followed reside somehow in a particular body.

VI

Referendum-Plebiscite not rendered nugatory by the participation of the 15 –year olds.

1. October 16 is in parts a referendum and a plebiscite. The question - (1) Do you want martial law to be continued? - is a referendum question, wherein the 15-year olds may participate. This was prompted by the desire of the Government to reach the larger mass of the people so that their true pulse may be felt to guide the President in pursuing his program for a New Order. For the succeeding question on the proposed amendments, only those of voting age of 18 years may participate. This is the plebiscite aspect, as contemplated in Section 2, Article XVI of the new Constitution.[36] On this second question, it would only be the votes of those 18 years old and above which will have valid bearing on the results. The fact that the voting populace are simultaneously asked to answer the referendum question and the plebiscite question does not infirm the referendum-plebiscite. There is nothing objectionable in consulting the people on a given issue, which is of current one and submitting to them for ratification of proposed constitutional amendments. The fear of conmingled votes (15 -year olds and 18-year olds above) is readily dispelled by the provision of two ballot boxes for every barangay center, one containing the ballots of voters fifteen years of age and under eighteen, and another containing the ballots of voters eighteen years of age and above.[37] The ballots in the ballot box for voters fifteen years of age and under eighteen shall be counted ahead of the ballots of voters eighteen years and above contained in another ballot box. And, the results of the referendum-plebiscite shall be separately prepared for the age groupings, i.e., ballots contained in each of the two boxes.[38]

2. It is apt to distinguish here between a "referendum" and a "plebiscite." A "referendum" is merely consultative in character. It is simply a means of assessing public reaction to the given issues submitted to the people for their consideration, the calling of which is derived from or within the totality of the executive power of the President.[39] It is participated in by all citizens from the age of fifteen, regardless of whether or not they are illiterates, feeble-minded, or ex-convicts.[40] A "plebiscite," on the other hand, involves the constituent act of those "citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election." [41] Literacy, property, or any other substantive requirement is not imposed. It is generally associated with the amending process of the Constitution, more particularly, the ratification aspect.

VII

Freedoms of expression and assembly not disturbed.

1. There appears to be no valid basis for the claim that the regime of martial law stultifies in main the freedom to dissent. That speaks of a bygone fear. The martial law regime which, in the observation of Justice Fernando, "is impressed with a mild character" recorded no State imposition for a muffled voice. To be sure, there are restraints of the individual liberty, but on certain grounds no total suppression of that liberty is aimed at. The

machinery for the referendum-plebiscite on October 16 recognizes all the embracing freedoms of expression and assembly. The President himself had announced that he would not countenance any suppression of dissenting views on the issues, as he is not interested in winning a "yes" or "no" vote, but on the genuine sentiment of the people on the issues at hand.[42] Thus, the dissenters soon found their way to the public forums, voicing out loud and clear their adverse views on the proposed amendments and even on the valid ratification of the 1973 Constitution, which is already a settled matter.[43] Even government employees have been held by the Civil Service Commission free to participate in public discussion and even campaign for their stand on the referendum-plebiscite issues.[44]

VIII

Time for deliberation is not short.

1. The period from September 21 to October 16 or a period of 3 weeks is not too short for free debates or discussions on the referendum-plebiscite issues. The questions are not new. They are the issues of the day. The people have been living with them since the proclamation of martial law four years ago. The referendums of 1973 and 1975 carried the same issue of martial law. That notwithstanding, the contested brief period for discussion is not without counterparts in previous plebiscites for constitutional amendments. Justice Makasiar, in the Referendum Case, recalls: 'Under the old Society, 15 days were allotted for the publication in three consecutive issues of the Official Gazette of the women's suffrage amendment to the Constitution before the scheduled plebiscite on April 30, 1937 (Corn. Act No. 34). The constitutional amendment to append as ordinance the complicated Tydings - Kautsky - Kowski was published in only three consecutive issues of the Official Gazette for 10 days prior to the scheduled plebiscite (Corn. Act 492). For the 1940 Constitutional amendments providing for the bicameral Congress, the reelection of the President and Vice-President, and the creation of the Commission on Elections, 20 days of publication in three consecutive issues of the Official Gazette was fixed (Com. Act No. 517). And the Parity Amendment, an involved constitutional amendment affecting the economy as well as the independence of the Republic was publicized in three consecutive issues of the Official Gazette for 20 days prior to the plebiscite (Rep. Act No. 73).'[45]

2. It is worthy to note that Article XVI of the Constitution makes no provision as to the specific date when the plebiscite shall be held, but simply states that it "shall be held not later than three months after the approval of such amendment or revision." In *Coleman v. Miller*,[46] the United States Supreme Court held that this matter of submission involves "an appraisal of a great variety of relevant conditions, political, social and economic," which "are essentially political and not justiciable." The constituent body or in the instant cases, the President, may fix the time within which the people may act. This is because, first, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time; second, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed, they are to be considered and disposed of presently; and third, ratification is but the expression of the approbation of the people, hence, it must be done contemporaneously.[47] In the words of Jameson, "(a)n alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by [proper body]."[48]

IN RESUME

The three issues are:

1. Is the question of the constitutionality of Presidential Decrees Nos. 991, 1031 and 1033 political or justiciable?
2. During the present stage of the transition period, and under the environmental circumstances now obtaining,

does the President possess power to propose amendments to the Constitution as well as set up the required machinery and prescribe the procedure for the ratification of his proposals by the people?

3. Is the submission to the people of the proposed amendments within the time frame allowed therefor a sufficient and proper submission?

Upon the first issue, Chief Justice Fred Ruiz Castro and Associate Justices Enrique M. Fernando, Claudio Teehankee, Antonio P. Barredo, Cecilia Muñoz Palma, Hermogenes Concepcion Jr. and Ruperto G. Martin are of the view that the question posed is justiciable, while Associate Justices Felix V. Makasiar, Felix Q. Antonio and Ramon C. Aquino hold the view that the question is political.

Upon the second issue, Chief Justice Castro and Associate Justices Barredo, Makasiar, Antonio, Aquino, Concepcion Jr. and Martin voted in the affirmative, while Associate Justices Teehankee and Muñoz Palma voted in the negative. Associate Justice Fernando, conformably to his concurring and dissenting opinion in *Aquino vs. Enrile* (59 SCRA 183), specifically dissents from the proposition that there is concentration of powers in the Executive during periods of crisis, thus raising serious doubts as to the power of the President to propose amendments.

Upon the third issue, Chief Justice Castro and Associate Justices Barredo, Makasiar, Aquino, Concepcion Jr. and Martin are of the view that there is a sufficient and proper submission of the proposed amendments for ratification by the people. Associate Justices Barredo and Makasiar expressed the hope, however, that the period of time may be extended. Associate Justices Fernando, Makasiar and Antonio are of the view that the question is political and therefore beyond the competence and cognizance of this Court. Associate Justice Fernando adheres to his concurrence in the opinion of Chief Justice Concepcion in *Gonzales vs. COMELEC* (21 SCRA 774). Associate Justices Teehankee and Muñoz Palma hold that prescinding from the President's lack of authority to exercise the constituent power to propose the amendments, etc., as above stated, there is no fair and proper submission with sufficient information and time to assure intelligent consent or rejection under the standards set by this Court in the controlling cases of *Gonzales, supra.* and *Tolentino vs. COMELEC* (41 SCRA 702).

Chief Justice Castro and Associate Justices Barredo, Makasiar, Antonio, Aquino, Concepcion Jr. and Martin voted to dismiss the three petitions at bar. For reasons as expressed in his separate opinion, Associate Justice Fernando concurs in the result. Associate Justices Teehankee and Muñoz Palma voted to grant the petitions.

ACCORDINGLY, the vote being 8 to 2 to dismiss, the said petitions are hereby dismissed. This decision is immediately executory.

SO ORDERED.

Ruiz Castro, C.J., states the reasons for his concurrence in a separate opinion.

Fernando, J., concurs in the result and conformably to his opinion in *Aquino v. Ponce Enrile* (59 SCRA 183) dissents from the proposition that there is concentration of powers in the president, during martial law.

Teehankee, J., files a dissenting opinion.

Barredo, Antonio, and Concepcion, Jr., JJ., concurs in a separate opinion.

Makasiar, J., concurs and dissents in a separate opinion.

Muñoz Palma, J., dissents in a separate opinion.

Aquino, J., in the result.

[1] Sec. 3, PD 991, September 2, 1976.

[2] "SEC. 4. Who shall participate. - Every Filipino citizen, literate or not, fifteen years of age or over who has resided in the barangay for at least six months shall participate in the consultation in his barangay. Provided, how-ever, That any person who may not be able to participate in the consultations of his barangay may do so in any ba-rangay most convenient to him; Provided, further, That no barangay member shall participate in more than one barangay consultation.

[3] "SEC. 15. The interim National Assembly, upon special call by the interim Prime Minister, may, by a majority vote of all its Members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof."

[4] Pascual v. Secretary of Public Works, 110 Phil. 331(1960).

[5] Section 18.

[6] Section 5.

[7] Tan v. Macapagal, L-34161, Feb. 29, 1972, 43 SCRA 677, Fernando, J., ponente. See also Standing to Secure Judicial Review, Jaffe, 74 Harvard Law Review 1265 (May 1961).

[8] Concurring and dissenting opinion of Justice Fernando in the Plebiscite Cases (Planas v. Comelec, 49 SCRA 105). See Martial Law and the New Society in the Philippines, Supreme Court, 1976, at 152.

[9] Orfield, Amending the Federal Constitution, III.

[10] Separate Opinion of Justice Concepcion in the Ratification Cases (Javellana v. the Executive Secretary, 50 SCRA 30), Martial Law and the new Society in the Philippines, 1976, Supreme Court, 210-224; quoting Tañada v. Cuenco, 103 Phil. 1051.

[11] See Martial Law and the New Society in the Philippines, Supreme Court, 1976, at 121.

[12] Idem, at 210.

[13] The view of the Chief Justice was shared by Justices Makalintal (later Chief Justice), Zaldivar, Castro (present Chief Justice), Fernando, and Teehankee. Justice Barredo qualified his vote, stating that "inasmuch as it is claimed that there has been approval by the people, the Court may inquire into the question of whether or not there has actually been such an approval, and, in the af-firmative, the Court should keep its hands-off out of respect to the people's will, but, in the negative, the Court may determine from both factual and legal angles whether or not Article XV of the 1935 Constitution has been complied with." Justices Makasiar, Antonio and Esguerra hold that the issue is political and "beyond the ambit of judicial inquiry."

[14] 62 SCRA 275, Referendum Case, Martial Law and the New Society in the Philippines, Supreme Court, 1976, at 1071.

[15] Idem, at 1079-1081.

[16] In the United States, all amendments to the Fe-deral Constitution, except the Twenty-First Amendment, had been proposed by the U.S. Congress, Modern Constitutional Law, Antieau, Vol. 2, 1969 ed., at 482.

[17] The Amending of the Federal Constitution by Orfield, 1942, 48-53; 103-105.

[18] Black's Constitutional Law, Hornkbook series, at 42.

[19] Hollingsworth v. Virginia, 3 Dall. 378.

[20] There are 3 types of crisis in the life of a de-mocratic nation. First, is war, particularly a war to repel

invasions, when a state must convert its peacetime political and social order into a wartime fighting machine and over-match the skill and efficiency of the enemy. Second is rebellion, when the authority of a constitutional government is resisted openly by a large numbers of its citizens who are engaged in violent insurrection against the enforcement of its laws or are bent on capturing it illegally or even destroying it altogether. Third is economic depression - a crisis greater than war. Rossiter, Constitutional Dictatorship, at 6.

[21] Constitutional Dictatorship by Clinton Rossiter, 288-290.

[22] Corwin, The President Office and Powers, at 371.

[23] See Separate Opinion of Chief Justice (then Justice Castro in the Referendum Case (Aquino v. Comelec), at p. 1084, Martial Law and the New Society in the Philippines, Supreme Court, 1976.

[24] Separate Opinion of Justice Fernandez in same case, at 1129 of Martial Law and the New Society in the Philippines.

[25] See Corwin, The President Office and Powers, at 305.

[26] Orfield, Amending the Federal Constitution, at 55.

[27] Daily Express Sept. 17, 1976; Times Journal, Sept. 17, 1976.

[28] Sunday Express, September 5, 1976.

[29] Daily Express, September 23, 1976.

[30] Section 1, Article II, 1973 Constitution.

[31] See Orfield, Amending the Federal Constitution, 140-143. The first meaning includes all persons living within the state during the whole time of the existence of the state; the second, the sum of all individuals as an organized group living within the state at the same time; and the third, the organized group of individuals living within the state with the exception of the government.

[32] Friedrich, The Philosophy of Law in Historical Perspective, 1963, at 221.

[33] Orfield, Amending the Federal Constitution, at 105.

[34] Abrams v. United States, 250 U.S. 616, 630.

[35] Op. Cit., at 221.

[36] "Any amendment to, or revision of, this Constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not later than three months after the approval of such amendment or revision."

[37] See Sec. 9, PD No. 229.

[38] Secs. 13 and 14, PD No. 229.

[39] Separate Opinion of Justice Palma in the Referendum Case (Aquino v. COMELEC), at 1135, Martial Law and the New Society in the Philippines, 1976, Supreme Court.

[40] Separate Opinion of Justices Makalintal and Castro in the Ratification Case (Javellana v. The Executive Secretary, 50 SCRA 30), at 292-293, Martial Law and the New Society in the Philippines.

[41] Sec. 1, Article VI, 1973 Constitution.

[42] See Daily Express, September 29, 1976.

[43] See Times Journal, September 30, 1976.

[44] Times Journal, October 2, 1976.

[45] See Martial Law and the New Society, 1976, Supreme Court, at 1082-83.

[46] 307 U.S. 433, see Cases in Constitutional Law, 3rd ed., Cushman and Cushman, 12-13.

[47] Dillon v. Gloss, 256 U.S. 368.

[48] Willoughby on the Constitution of the United States, Vol. 1, 595-96.

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CONCURRING OPINION

ANTONIO, J.:

I

At the threshold, it is necessary to clarify what is a "political question". It must be noted that this device has been utilized by the judiciary "to avoid determining questions it is ill equipped to determine or that could be settled in any event only with the effective support of the political branches." [1] According to Weston, judges, whether "personal representatives of a truly sovereign king, or taking their seats as the creatures of a largely popular sovereignty speaking through a written constitution, derive their power by a delegation, which clearly or obscurely as the case may be, delineates and delimits their delegated jurisdiction. * * * Judicial questions * * * are those which the sovereign has set to be decided in the courts. Political questions, similarly, are those which the sovereign has entrusted to the so-called political departments of government or has reserved to be settled by its own extra-governmental action." [2] Reflecting a similar concept, this Court has defined a "political question" as a "matter which is to be exercised by the people in their primary political capacity or that has been specifically delegated to some other department or particular officer of the government, with discretionary power to act." [3] In other words, it refers to 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 government. [4]

In determining whether an issue falls within the political question category, the absence of a satisfactory criterion for a judicial determination or the appropriateness of attributing finality to the action of the political departments of government are dominant considerations. This was explained by Justice Brennan in *Baker v. Carr*, [5] thus:

"Prominent on the surface of any case held to involve political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. * * *"

To decide whether a matter has in a measure been committed by the Constitution to another branch of government or retained by the people to be decided by them in their sovereign capacity, or whether that branch exceeds whatever authority has been committed to it, is indeed a delicate exercise in constitutional interpretation.

In *Coleman v. Millen*,^[6] the United States Supreme Court held that the efficacy of the ratification by state legislatures of a constitutional amendment is a political question. On the question of whether the State Legislature could constitutionally ratify an amendment, after the same had been previously rejected by it, it was held that the ultimate authority over the question was in Congress in the exercise of its control over the promulgation of the adoption of the amendment. And in connection with the second question of whether the amendment has lost its vitality through the lapse of time, the Court held that the question was likewise political, involving "as it does * * * an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice and as to which it would be an extravagant extension of juridical authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable."

In their concurring opinions in *Coleman*, Justices Black, Roberts, Frankfurter and Douglas stressed that:

"The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure for Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by a 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens and subjects of * * * government.' Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn assurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation. To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree."

Relying on the doctrine enunciated in *Coleman v. Miller*, *supra*, this Court, in *Mabanag v. Lopez Vito*,^[7] speaking through Mr. Justice Pedro Tuason, ruled that the process of constitutional amendment, involving proposal and ratification, is a political question. In the *Mabanag* case, the petitioners sought to prevent the enforcement of a resolution of Congress proposing the "Parity Amendment" to the Philippine Constitution on the ground that it had not been approved by the three-fourths vote of all the members of each house as required by Article XV of the 1935 Constitution. It was claimed that three (3) Senators and eight (8) members of the House of Representatives had been suspended and that their membership was not considered in the determination of the three-fourths vote. In dismissing the petition on the ground that the question of the validity of the proposal was political, the Court stated:

"If ratification of an amendment is a political question, a proposal which leads to ratification has to be a political question. The two steps complement each other in a scheme intended to achieve a single objective. It is to be noted that amendatory process as provided in Section 1 of Article XV of the Philippine Constitution 'consists of (only) two distinct parts: proposal and ratification.' There is no logic in attaching political character to one and withholding that character from the other. Proposal to amend the Constitution is a highly political function performed by the Congress in its sovereign legislative capacity and committed to its charge by the Constitution itself. * * *" (At pages 4-5, italics supplied.)

It is true that in *Gonzales v. Comelec*,^[8] this Court stated that it overruled *Mabanag* declaring that the issue whether or not a Resolution of Congress, acting as a constituent assembly --- violates the Constitution is essentially justiciable, not political, and hence, subject to judicial review." But it was not necessary for the Court to have overruled the doctrine enunciated in *Mabanag*. What was involved in *Gonzales* was not the validity of a proposed amendment to the Constitution approved by Congress in the exercise of its constituent powers but an ordinary statute enacted by Congress, providing for the submission of certain proposed constitutional amendments to the people.^[9] Similarly, in *Tolentino v. Commission on Elections*,^[10] what was involved was not the validity of the proposal to lower the voting age but rather that of the resolution of the Constitutional Convention submitting the proposal for ratification. The question was whether all the amendments to be submitted by the same Convention must be done piecemeal or must be submitted to the people for approval or rejection in a single "election" or plebiscite. Such is not the case here.

II

Here, the point has been stressed that the President is acting as agent for and in behalf of the people in proposing the amendment. There can be no question that in the referendum of January, 1973 and in the subsequent referendums the people had clearly and categorically rejected the calling of the interim National Assembly. As stated in the main opinion, the *Lupong Tagapagpaganap* of the *Katipunan ng mga Sanggunian*, the *Pambansang Katipunan ng maa Barangay* representing 42,000 barangays, the *Kabataang Barangay* organizations and the various sectoral groups had proposed the replacement of the interim National Assembly. These barangays and the *Sanggunian* assemblies have proven to be effective instrumentalities through which the desires of the people have been articulated and expressed. The *Batasang Bayan* (Legislative Council), composed of nineteen (19) cabinet members and nine (9) officials with cabinet rank, and ninety one (91) members of the *Lupong Tagapagpaganap* (Executive Committee) of the *Katipunan ng mga Sangguniang Bayan* voted in their special session to submit directly to the people in a plebiscite on October 16, 1976 the afore-mentioned constitutional amendments. These proposed amendments reflected the desires of the people. Through the *Pambansang Katipunan ng mga Barangay* and the *Pampurok na Katipunan ng mga Sangguniang Bayan*, the people have expressed their desire not only to abolish the interim National Assembly, but to replace it with a more representative body acceptable to them in order to effect the desirable constitutional changes necessary to hasten the political evolution of the government towards the parliamentary system, while at the same time ensuring that the gains of the New Society, which are vital to the welfare of the people, shall be safeguarded. It cannot be doubted, therefore, that these proposed changes were initiated by the people themselves.

It would be futile to insist that the interim National Assembly should have been convened to propose those amendments pursuant to Section 15 of Article XVII of the Constitution. This Court, in the case of *Aquino v. Commission on Elections*,^[11] took judicial notice of the fact that in the referendum of January, 1973, a majority of those who approved the new Constitution voted on the condition that the interim National Assembly provided in the Transitory Provisions should not be convened, and the President "in deference to the sovereign will of the Filipino people" declared that the convening of said body shall be suspended.^[12] As this Court observed in the *Aquino* case:

"His decision to defer the initial convocation of the interim National Assembly was supported by the sovereign people at the referendum in January, 1973 when the people voted to postpone the convening of the interim National Assembly until after at least seven (7) years from the approval of the new Constitution. And the reason why the same question was eliminated from the questions to be submitted at the referendum on February 27, 1975, is that even some members of the Congress and delegates of the Constitutional Convention, who are already ipso facto members of the interim National Assembly, are against such inclusion; because the issue was already decided in the January, 1973 referendum by the sovereign people indicating thereby their

disenchantment with any Assembly as the former Congress failed to institutionalize the reforms they demanded and had wasted public funds through endless debates without relieving the suffering of the general mass of citizenry." (p. 302).

The action of the President in suspending the convening of the interim National Assembly has met the overwhelming approval of the people in subsequent referenda.

Since it was the action by the people that gave binding force and effect to the new Constitution, then it must be accepted as a necessary consequence that the condition imposed by them, that the interim assembly be not convened, should also be respected as a positive mandate of the same sovereign.

In the Philippines, which is a unitary state, sovereignty resides in the people and all government authority emanates from them.^[13] The term "people" as sovereign is comprehensive in its context. The people, as sovereign creator of all political reality, is not merely the enfranchised citizens but the political unity of the people.^[14] It connotes, therefore, a people which exists not only in the urgent present but in the continuum of history. The assumption that the opinion of The People as voters can be treated as the expression of the interests of The People as a historic community was, to the distinguished American journalist and public philosopher, Walter Lippmann, unwarranted.

"Because of the discrepancy between The People as Voters and The People as the corporate nation, the voters have no title to consider themselves the proprietors of the commonwealth and to claim that their interests are identical to the public interest. A prevailing plurality of the voters are not The People. The claim that they are is a bogus title invoked to justify the usurpation of the executive power by representative assemblies and the intimidation of public men by demagogic politicians. In fact demagoguery can be described as the sleight of hand by which a faction of The People as voters are invested with the authority of The People. That is why so many crimes are committed in the People's name."^[15]

In *Gonzales v. Comelec*, supra, the Court clearly emphasized that the power to propose amendments or to amend the Constitution is part of the inherent power of the people as the repository of sovereignty in a republican state. While Congress may propose amendments to the Constitution, it acts pursuant to authority granted to it by the people through the Constitution. Both the power to propose and the authority to approve, therefore, inhere in the people as the bearer of the Constitution making power.

In the absence of a functioning interim National Assembly which, under the Constitution, had the authority to propose amendments, it cannot be doubted that the people in case of necessity could directly exercise the constituent power themselves or designate any other instrumentality to propose such amendments. For Law, like Nature, abhors a vacuum (*natura vacuum abhorret*).

The political character of the question is clearly manifest, considering that in the ultimate analysis, the final arbiter of the question whether or not the President has authority to act for the people in submitting such proposals for ratification at the plebiscite of October 16 are the people themselves. It certainly involves a matter which is to be exercised by the people in their sovereign capacity, hence, it is essentially political, not judicial.

While it is true that the constituent power is not to be confused with legislative power in general because the prerogative to propose amendments is not embraced within the context of ordinary lawmaking, it must be noted that the proposals to be submitted for ratification in the forthcoming referendum are, in the final analysis, actually not of the President but in effect of the people themselves, speaking through their authorized instrumentalities.

As the Chief Justice aptly stated in his concurring opinion in this case:

"* * * The President merely formalized the said proposals in Presidential Decree No. 1033. It being conceded in all quarters that sovereignty resides in the people and it having been demonstrated that their constituent power to amend the Constitution has not been delegated by them to any instrumentality of the Government during the present stage of the transition period of our political development, the conclusion is ineluctable that their exertion of that residuary power cannot be vulnerable to any constitutional challenge as being ultra vires. Accordingly, without venturing to rule on whether or not the President is vested with constituent power as it does not appear necessary to do so in the premises --- the proposals here challenged, being acts of the sovereign people no less, cannot be said to be afflicted with unconstitutionality. A fortiori, the concomitant authority to call a plebiscite and to appropriate funds therefor is even less vulnerable not only because the President, in exercising said authority, has acted as a mere alter ego of the people who made the proposals, but likewise because the said authority is legislative in nature rather than constituent."

This is but a recognition that the People of the Philippines have the inherent, sole and exclusive right of regulating their own government, and of altering or abolishing their Constitution whenever it may be necessary to their safety or happiness. There appears to be no justification, under the existing circumstances for a Court to create by implication a limitation on the sovereign power of the people. As has been clearly explained in a previous case:[16]

"There is nothing in the nature of the submission which should cause the free exercise of it to be obstructed, or that could render it dangerous to the stability of the government; because the measure derives all its vital force from the action of the people at the ballot box, and there can never be danger in submitting in an established form, to a free people, the proposition whether they will change their fundamental law, The means provided for the exercise of their sovereign right of changing their constitution should receive such a construction as not to trammel the exercise of the right. Difficulties and embarrassments in its exercise are in derogation of the right of free government, which is inherent in the people; and the best security against tumult and revolution is the free and unobstructed privilege to the people of the State to change their constitution in the mode prescribed by the instrument. "

III

The paramount consideration that impelled Us to arrive at the foregoing opinion is the necessity of ensuring popular control over the constituent power. "If the people are to control the constituent power the power to make and change the fundamental law of the State," observed Wheeler,[17] "the process of Constitutional change must not be based too heavily upon existing agencies of government." Indeed, the basic premise of republicanism is that the ordinary citizen, the common man, can be trusted to determine his political destiny. Therefore, it is time that the people should be accorded the fullest opportunity to decide the fundamental charter that shall provide for their governance. For in the ultimate analysis, the success of the national endeavor shall depend on the vision, discipline and firmness of the moral will of every Filipino.

IN VIEW OF THE FOREGOING CONSIDERATIONS, We vote to dismiss the petitions.

[1] Carl Brent Swisher, *The Supreme Cocoa in the Modern Rose*, 1958 ed., p. 173.

[2] Melville Fuller Weston, *Political questions*, 38 Harv. L. Rev., 296. Italics supplied.

[3] *Tañada v. Cuenco*, 103 Phil. 1051, 1057, citing *In re McConaughy*, 119 NW 408. Italics supplied.

[4] 16 C.J.S. 413.

[5] 369 U.S. 186, 217.

[6] 307 U.S. 433.

[7] 78 Phil. 1 (1947).

[8] 21 SCRA 774.

[9] Republic Act No. 413.

[10] 41 SCRA 702.

[11] L-40004, January 31, 1975, 62 SCRA 275.

[12] Proclamation No. 1103, January 17, 1973.

[13] Section 1, Article II, Constitution.

[14] Leibholz: Politics and Law, p. 24.

[15] Today's Revolution: Democracy, Marcos, pp. 87-88.

[16] Mabanag v. Lopez Vito, supra, at page 5, citing Green v. Weller, 32 Miss., 650; note, 10 L.R.A., N.S., 150.

[17] John P. Wheeler, Jr., Changing the Fundamental Law - SALIENT ISSUES OF CONSTITUTIONAL REVISION; 1961 ed.

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CONCURRING OPINION

CASTRO, C.J.:

From the challenge as formulated in the three petitions at bar and the grounds advanced by the Solicitor General in opposition thereto, as well as the arguments adduced by the counsels of the parties at the hearing had on October 7 and 8, 1976, three vital issues readily project themselves as the centers of controversy, namely:

- (1) Is the question of the constitutionality of Presidential Decrees Nos. 991, 1031 and 1033 political or justiciable?
- (2) During the present stage of the transition period, and under the environmental circumstances now obtaining, does the President possess power to propose amendments to the Constitution as well as set up the required machinery and prescribe the procedure for the ratification of his proposals by the people?
- (3) Is the submission to the people of the proposed amendments within the time frame allowed therefore a sufficient and proper submission?

I

First Issue

The threshold question is not at all one of first impression. Specifically on the matter of proposals to amend the Constitution, this Court, in *Mabanag vs. Lopez Vito* (78 Phil. 1), inceptively announced the dictum that -

"Proposal to amend the Constitution is a highly political function performed by the Congress in its sovereign legislative capacity and committed to its charge by the Constitution itself. The exercise of this power is even independent of any intervention by the Chief Executive. If on grounds of expediency scrupulous attention of the judiciary be needed to safeguard public interest, there is less reason for judicial inquiry into the validity of a proposal than into that of a ratification."

In time, however, the validity of the said pronouncement was eroded. In the assessment of the Court itself -

"The force of this precedent has been weakened, however, by *Suanes vs. Chief Accountant of the Senate* (81 Phil. 818), *Avelino vs. Cuenco* (L-2581, March 4 and 14, 1949), *Tañada vs. Cuenco* (L-10520, February 28, 1957), and *Macias vs. Commission on Elections* (L-18684, September 14, 1961).

x x x x

"In short, the issue whether or not a Resolution of Congress - acting as a constituent assembly - violates the Constitution is essentially justiciable, not political, and, hence, subject to judicial review, and, to the extent that this view may be inconsistent with the stand taken in *Mabanag vs. Lopez Vito* (supra), the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point." (*Gonzales vs. Commission on Elections, et al.*, L-28196, November 9, 1967, 21 SCRA 774, 786-787).

The abandonment of the *Mabanag vs. Lopez Vito* doctrine appears to have been completed when, in *Javellana vs. Executive Secretary, et al.* (L-36142, March 31, 1973, 50 SCRA 30), six members of the Court concurred in the view that the question of whether the 1973 Constitution was ratified in accordance with the provisions of Article XV (Amendments) of the 1935 Constitution is inherently and essentially justiciable.

As elucidated therein, with extensive quotations from *Tañada vs. Cuenco* (103 Phil. 1051) -

"x x x the term 'political question' connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy in matters concerning the government of a State, as body politic. In other words, in the language of *Corpus Juris Secundum* (supra), it refers to '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 Legislature or executive branch of the government.' It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."

"Accordingly, when the grant of power is qualified, conditional or subject to limitations, the issue on whether or not the prescribed qualifications or conditions have been met, or the limitations respected, is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions or limitations - particularly those prescribed or imposed by the Constitution - would be set at naught." (*Javellana vs. Executive Secretary, supra*).

So it is in the situation here presented. The basic issue is the constitutional validity of the presidential acts of proposing amendments to the Constitution and of calling a referendum-plebiscite for the ratification of the proposals made. Evidently, the question does not concern itself with the wisdom of the exercise of the authority claimed or of the specific amendments proposed. Instead, the inquiry *vel non* is focused solely on the existence of the said power in the President - a question purely of legality determinable thru interpretation and construction of the letter and spirit of the Constitution by the Court as the final arbiter in the delineation of constitutional

boundaries and the allocation of constitutional powers.

For the Court to shun cognizance of the challenge herein presented, especially in these parlous years, would be to abdicate its constitutional powers, shirk its constitutional responsibility, and deny the people their ultimate recourse for judicial determination.

I have thus no hesitancy in concluding that the question here presented is well within the periphery of judicial inquiry.

II

Second Issue

The main question stands on a different footing; it appears unprecedented both here and elsewhere. Its solution, I believe, can be found and unraveled only by a critical assessment of the existing legal order in the light of the prevailing political and factual milieu.

To be sure, there is an impressive array of consistent jurisprudence on the proposition that, normally or under normal conditions, a Constitution may be amended only in accord with the procedure set forth therein. Hence, if there be any such prescription for the amendatory process - as invariably there is because one of the essential parts of a Constitution is the so-called "constitution of sovereignty" which comprises the provision or provisions on the modes in accordance with which formal changes in the fundamental law may be effected - the same would ordinarily be the controlling criterion for the validity of the amendments sought.

Unfortunately, however, during the present transition period of our political development, no express provision is extant in the Constitution regarding the agency or agent by whom and the procedure by which amendments thereto may be proposed and ratified - a fact overlooked by those who challenge the validity of the presidential acts in the premises. This is so because there are at least two distinctly perceptible stages in the transition from the old system of government under the 1935 Constitution to the new one established by the 1973 Constitution.

The first stage comprises the period from the effectivity of the Constitution on January 17, 1973 to the time the interim National Assembly is convened by the incumbent President and the interim President and the interim Prime Minister are chosen (Article XVII, Sections 1 and 3[1]). The existence of this stage as an obvious fact of the nation's political life was recognized by the Court in *Aquino vs. Commission on Elections, et al.* (L-40004, January 31, 1975, 62 SCRA 275), when it rejected the claim that, under the 1973 Constitution, the President was in duty bound to convene the interim National Assembly soon after the Constitution took effect.

The second stage embraces the period from the date the interim National Assembly is convened to the date the Government described in Articles VII to IX of the Constitution is inaugurated, following the election of the members of the regular National Assembly (Article XVII, Section 1) and the election of the regular President and Prime Minister. This is as it should be because it is recognized that the President has been accorded the discretion to determine when he shall initially convene the interim National Assembly, and his decision to defer the convocation thereof has found overwhelming support by the sovereign people in two previous referenda, thereby giving reality to an interregnum between the effectivity of the Constitution and the initial convocation of the interim National Assembly, which interregnum, as aforesaid, constitutes the first stage in the transition period.

Against this factual backdrop, it is readily discernible that neither of the two sets of provisions embodied in the Constitution on the amendatory process applies during the said first stage. Thus, Section 15, Article XVII (Transitory Provisions) provides -

"Sec. 15. The interim National Assembly, upon special call by the interim Prime Minister, may, by a majority

vote of all its Members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof."

Patently, the reference to the "interim National Assembly" and the "interim Prime Minister" limits the application thereof to the second stage of the transition period, i.e., after the interim National Assembly shall have been convened and the interim Prime Minister shall have been chosen.

Upon the other hand, the provisions of Article XVI (Amendments), to wit -

"SECTION 1. (1) Any amendment to, or revision of, this Constitution may be proposed by the National Assembly upon a vote of three-fourths of all its Members, or by a constitutional convention.

"(2) The National Assembly may, by a vote of two-thirds of all its Members, call a constitutional convention or, by a majority vote of all its Members, submit the question of calling such a convention to the electorate in an election.

"SEC. 2. Any amendment to, or revision of, this Constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not later than three months after the approval of such amendment or revision."

unequivocally contemplate amendments after the regular Government shall have become fully operative, referring as they do to the National Assembly which will come into being only at that time.

In the face of this constitutional hiatus, we are confronted with the dilemma whether amendments to the Constitution may be effected during the aforesaid first stage and, if in the affirmative, by whom and in what manner such amendments may be proposed and ratified.

Susceptibility to change is one of the hallmarks of an ideal Constitution. Not being a mere declaration of the traditions of a nation but more the embodiment of a people's hopes and aspirations, its strictures are not unalterable. They are, instead, dynamic precepts intended to keep in stride with and attuned to the living social organism they seek to fashion and govern. If it is conceded that "the political or philosophical aphorism of one generation is doubted by the next and entirely discarded by the third," then a Constitution must be able to adjust to the changing needs and demands of society so that the latter may survive, progress and endure. On these verities, there can be no debate.

During the first stage of the transition period in which the Government is at present - which is understandably the most critical - the need for change may be most pressing and imperative, and to disavow the existence of the right to amend the Constitution would be sheer political heresy. Such view would deny the people a mechanism for effecting peaceful change, and belie the organic conception of the Constitution by depriving it of its means of growth. Such a result obviously could not have been intended by the framers of the fundamental law.

It seems, however, that the happenstance that the first period would come to pass before the convocation of the interim National Assembly was not anticipated, hence, the omission of an express mandate to govern the said situation in so far as amendments are concerned. But such omission through inadvertence should not, because it cannot, negate the sovereign power of the people to amend the fundamental charter that governs their lives and their future and perhaps even determines their very survival as a nation.

Upon the other hand, it is clear from the afore-quoted provisions on the amendatory process that the intent was, instead, to provide a simpler and more expeditious mode of amending the Constitution during the transition period. For, while under Article XVI thereof, proposals for amendment may be made directly by the regular National Assembly by a vote of at least three-fourths of all its members, under Section 15 of Article XVII, a bare majority vote of all the members of the interim National Assembly would suffice for the purpose. The relaxation

and the disparity in the vote requirement are revealing. They can only signify a recognition of the need to facilitate the adoption of amendments during the second stage of the transition period so that the interim National Assembly will be able, in a manner of speaking, to iron out the kinks in the new Constitution, remove imperfections therein, and provide for changed or changing circumstances before the establishment of the regular Government. In this context, therefore, it is inutile speculation to assume that the Constitution was intended to render impotent or bar the effectuation of needful change at an even more critical period - the first stage. With greater reason, therefore, must the right and power to amend the Constitution during the first stage of the transition period be upheld, albeit within its express and implied constraints.

Neither can it be successfully argued, in the same context and in the present posture, that the Constitution may be amended during the said first stage only by convening the interim National Assembly. That is to say and require that the said stage must first be brought to an end before any amendment may be proposed and ratified. Settled jurisprudence does not square with such a proposition. As aptly noted in *Aquino vs. Commission on Elections, et al.*, supra, the framers of the Constitution set no deadline for the convening of the interim National Assembly because they could not have foreseen how long the crises which impelled the proclamation and justify the continued state of martial law would last. Indeed, the framers committed to the sound judgment of the President the determination of the time when the interim National Assembly should be convoked. That judgment is not subject to judicial review, save possibly to determine whether arbitrariness has infected such exercise; absent such a taint, the matter is solely in the keeping of the President. To thus contend that only by convening the interim National Assembly may the Constitution be amended at this time would be to effectively override the judgment vested in the President, even in default of any showing that in not convoking the interim National Assembly he has acted arbitrarily or gravely abused his discretion. Furthermore, to sustain such a contention would not only negate the mandate so resoundingly expressed by the people in two national referenda against the immediate convening of the interim National Assembly, but as well deride their overwhelming approval of the manner in which the President has exercised the legislative power to issue proclamations, orders, decrees and instructions having the stature and force of law.

Given the constitutional stalemate or impasse spawned by these supervening developments, the logical query that compels itself for resolution is: By whom, then, may proposals for the amendment of the Constitution be made and in what manner may said proposals be ratified by the people?

It is conventional wisdom that, conceptually, the constituent power is not to be confused with legislative power in general because the prerogative to propose amendments to the Constitution is not in any sense embraced within the ambit of ordinary law-making. Hence, there is much to recommend the proposition that, in default of an express grant thereof, the legislature - traditionally the delegated repository thereof - may not claim it under a general grant of legislative authority. In the same vein, neither would it be altogether unassailable to say that because by constitutional tradition and express allocation the constituent power under the Constitution is located in the law-making agency and at this stage of the transition period the law-making authority is firmly recognized as being lodged in the President, the said constituent power should now logically be in the hands of the President who may thus exercise it in place of the interim National Assembly. Instead, as pointed out in *Gonzales vs. Commission on Elections, et al.*, supra, the power to amend the Constitution or to propose amendments thereto

"x x x is part of the inherent powers of the people - as the repository of sovereignty in a republican state, such as ours - to make, and, hence, to amend their own Fundamental Law."

As such, it is undoubtedly a power that only the sovereign people, either directly by themselves or through their chosen delegate, can wield. Since it has been shown that the people, inadvertently or otherwise, have not delegated that power to any instrumentality during the current stage of our hegira from crisis to normalcy, it

follows of necessity that the same remains with them for them to exercise in the manner they see fit and through the agency they choose. And, even if it were conceded that - as it is reputedly the rule in some jurisdictions - a delegation of the constituent authority amounts to a complete divestiture from the people of the power delegated which they may not thereafter unilaterally reclaim from the delegate, there would be no violence done to such rule, assuming it to be applicable here, inasmuch as that power, under the environmental circumstances adverted to, has not been delegated to anyone in the first place. The constituent power during the first stage of the transition period belongs to and remains with the people, and accordingly may be exercised by them - how and when - at their pleasure.

At this juncture, a flashback to the recent and contemporary political ferment in the country proves revelatory. The people, shocked and revolted by the "obvious immorality" of the unabashed manner by which the delegates to the Constitutional Convention virtually legislated themselves into office as ipso facto members of the interim National Assembly by the mere fiat of voting for the transitory provisions of the Constitution and the stark reality that the unwieldy political monstrosity that the interim Assembly portended to be would have proven to be a veritable drain on the meager financial resources of a nation struggling for survival, have unequivocally put their foot down, as it were, on the convocation thereof. But this patently salutary decision of the people proved to be double-edged. It likewise bound the political machinery of the Government in a virtual straight-jacket and consigned the political evolution of the nation into a state of suspended animation. Faced with the ensuing dilemma, the people understandably agitated for a solution. Through consultations in the barangays and sanggunian assemblies, the instrumentalities through which the people's voice is articulated in the unique system of participatory democracy in the country today, the underpinnings for the hastening of the return to constitutional normalcy quickly evolved into an overwhelming sentiment to amend the Constitution in order to replace the discredited interim National Assembly with what the people believe will be an appropriate agency to eventually take over the law-making power and thus pave the way for the early lifting of martial rule. In pursuit of this sentiment, and to translate its constraints into concrete action, the Pambansang Katipunan ng mga Barangay, the Pambansang Katipunan ng mga Kabataang Barangay, the Lupong Tagapagpaganap of the Katipunan ng mga Sanggunian, and finally the Batasang Bayan, to a man and as one voice, have come forward with definitive proposals for the amendment of the Constitution, and, choosing the President - the only political arm of the State at this time through which that decision could be implemented and the end in view attained - as their spokesman, proposed the amendments under challenge in the cases at bar.

In the light of this milieu and its imperatives, one thing is inescapable: the proposals now submitted to the people for their ratification in the forthcoming referendum-plebiscite are factually not of the President; they are directly those of the people themselves speaking thru their authorized instrumentalities. The President merely formalized the said proposals in Presidential Decree No. 1033. It being conceded in all quarters that sovereignty resides in the people and it having been demonstrated that their constituent power to amend the Constitution has not been delegated by them to any instrumentality of the Government during the present stage of the transition period of our political development, the conclusion is ineluctable that their exertion of that residuary power cannot be vulnerable to any constitutional challenge as being ultra vires. Accordingly - without venturing to rule on whether or not the President is vested with constituent power, as it does not appear necessary to do so in the premises - the proposals here challenged, being acts of the sovereign people no less, cannot be said to be afflicted with unconstitutionality. A fortiori, the concomitant authority to call a plebiscite and to appropriate funds therefor is even less vulnerable not only because the President, in exercising said authority, has acted as a mere alter ego of the people who made the proposals, but likewise because the said authority is legislative in nature rather than constituent.

III

Third Issue

Little need be said of the claimed insufficiency and impropriety of the submission of the proposed amendments for ratification from the standpoint of time. The thesis cannot be disputed that a fair submission presupposes an adequate time lapse to enable the people to be sufficiently enlightened on the merits or demerits of the amendments presented for their ratification or rejection. However, circumstances there are which unmistakably demonstrate that the desideratum is met. Even if the proposals appear to have been formalized only upon the promulgation of Presidential Decree No. 1033 on September 22, 1976, they are actually the crystallization of sentiments that for so long have preoccupied the minds of the people and their authorized representatives, from the very lowest level of the political hierarchy. Hence, unlike proposals emanating from a legislative body, the same cannot but be said to have been mulled over, pondered upon, debated, discussed and sufficiently understood by the great masses of the nation long before they ripened into formal proposals.

Besides, it is a fact of which judicial notice may well be taken that in the not so distant past when the 1973 Constitution was submitted to the people for ratification, an all-out campaign, in which all the delegates to the Constitutional Convention reportedly participated, was launched to acquaint the people with the ramifications and workings of the new system of government sought to be inaugurated thereunder. It may thus well be assumed that the people in general have since acquired, in the very least, a working know-ledge of the entirety of the Constitution. The changes now proposed - the most substantial of which being merely the replacement of the interim National Assembly with another legislative arm for the Government during the transition period until the regular National Assembly shall have been constituted - do not appear to be of such complexity as to require considerable time to be brought home to the full understanding of the people. And, in fact, the massive and wide-ranging informational and educational campaign to this end has been and still is in full swing, with all the media, the barangays, the civic and sectoral groups - and even the religious - all over the land in active and often enthusiastic if not frenetic involvement.

Indeed, when the people cast their votes on October 16, a negative vote could very well mean an understanding of the proposals which they reject; an affirmative vote could equally be indicative of such understanding and/or an abiding credence in the fidelity with which the President has kept the trust they have confided to him as President and administrator of martial law.

ACCORDINGLY, I vote for the dismissal of the three petitions at bar.

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CONCURRING OPINION

CONCEPCION JR., J.:

I vote for the dismissal of the petitions.

1. The issue is not political and therefore justiciable.

The term "political question", as this Court has previously defined, refers to 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 Legislature or executive branch of the Government. It is concerned with the issues dependent upon the wisdom, not legality, of a particular measure.[1]

Here, the question raised is whether the President has authority to propose to the people amendments to the Constitution which the petitioners claim is vested solely upon the National Assembly, the constitutional convention called for the purpose, and the interim National Assembly. This is not a political question since it involves the determination of conflicting claims of authority under the constitution.

In *Gonzales vs. Comelec*,[2] this Court, resolving the issue of whether or not a Resolution of Congress, acting as a constituent assembly, violates the Constitution, ruled that the question is essentially justiciable, not political, and hence, subject to judicial review.

In *Tolentino vs. Comelec*,[3] this Court finally dispelled all doubts as to its position regarding its jurisdiction vis-a-vis the constitutionality of the acts of Congress, acting as a constituent assembly, as well as those of a constitutional convention called for the purpose of proposing amendments to the constitution. Insofar as observance of constitutional provisions on the procedure for amending the constitution is concerned, the issue is cognizable by this Court under its powers of judicial review.

2. As to the merits, a brief backdrop of the decision to hold the referendum-plebiscite will help resolve the issue. It is to be noted that under the 1973 Constitution, an interim National Assembly was organized to bring about an orderly transition from the presidential to the parliamentary system of government.[4] The people, however, probably distrustful of the members who are old-time politicians and constitutional delegates who had voted themselves into membership in the interim National Assembly, voted against the convening of the said interim assembly for at least seven years,[5] thus creating a political stalemate and a consequent delay in the transformation of the government into the parliamentary system. To resolve the impasse, the President, at the instance of the barangays and sanggunian assemblies through their duly authorized instrumentalities who recommended a study of the feasibility of abolishing and replacing the interim National Assembly with another interim body truly representative of the people in a reformed society, issued Presidential Decree No. 991, on September 2, 1976, calling for a national referendum on October 16, 1976 to ascertain the wishes of the people as to the ways and means that may be available to attain the objective; providing for a period of educational and information campaign on the issues; and establishing the mechanics and manner for holding thereof. But the people, through their barangays, addressed resolutions to the Batasang Bayan, expressing their desire to have the constitution amended, thus prompting the President to issue Presidential Decree No. 1033, stating the questions to be submitted to the people in the referendum-plebiscite on October 16, 1976.

As will be seen, the authority to amend the Constitution was removed from the interim National Assembly and transferred to the seat of sovereignty itself. Since the Constitution emanates from the people who are the repository of all political powers, their authority to amend the Constitution through the means they have adopted, aside from those mentioned in the Constitution, cannot be gainsaid. Not much reflection is also needed to show that the President did not exercise his martial law legislative powers when he proposed the amendments to the Constitution. He was merely acting as an instrument to carry out the will of the people. Neither could he convene the interim National Assembly, as suggested by the petitioners, without doing violence to the people's will expressed overwhelmingly when they decided against con-vening the interim assembly for at least seven years.

3. The period granted to the people to consider the proposed amendments is reasonably long and enough to afford intelligent discussion of the issues to be voted upon. PD 991 has required the barangays to hold assemblies or meetings to discuss and debate on the referendum questions, which in fact they have been doing. Considering that the proposed amendments came from the representatives of the people themselves, the people

must have already formed a decision by this time on what stand to take on the proposed amendments come the day for the plebiscite. Besides, the Constitution itself requires the holding of a plebiscite for the ratification of an amendment not later than three (3) months after the approval of such amendment or revision,[6] but without setting a definite period within which such plebiscite shall not be held. From this I can only conclude that the framers of the Constitution desired that only a short period shall elapse from the approval of such amendment or resolution to its ratification by the people.

[1] Tañada & Macapagal v. Cuenco, et al., 103 Phil. 1051.

[2] L-28196, Nov. 9, 1967; 21 SCRA 774.

[3] L-34150, Oct. 16, 1971, 41 SCRA 702.

[4] Article XVII, Section 1, Constitution.

[5] Aquino vs. Comelec, L-40004, Jan. 31, 1975, 62 SCRA 275, 302.

[6] Section 2, Article XVI, Constitution.

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concurring in the result and dissenting in part

FERNANDO, J.:

These three petitions, the latest in a series of cases starting from Planas v. Commission on Elections,[1] continuing with the epochal resolution in Javellana v. Executive Secretary,[2] and followed successively in three crucial decisions, Aquino v. Ponce Enrile,[3] Aquino v. Commission on Elections,[4] and Aquino v. Military Commission,[5] manifest to the same degree the delicate and awesome character of the function of judicial review. While previous rulings supply guidance and enlightenment, care is to be taken to avoid doctrinaire rigidity un-mindful of altered circumstances and the urgencies of the times. It is inappropriate to resolve the complex problems of a critical period without full awareness of the consequences that flow from whatever decision is reached. Jural norms must be read in the context of social facts. There is need therefore of adjusting inherited principles to new needs. For law, much more so constitutional law, is simultaneously a reflection of and a force in the society that it controls. No quality then can be more desirable in constitutional adjudication than that intellectual and imaginative insight which goes into the heart of the matter. The judiciary must survey things as they are in the light of what they must become. It must inquire into the specific problem posed not only in terms of the teaching of the past but also of the emerging political and legal theory, especially so under a leadership notable for its innovative approach to social problems and the vigor of its implementation. This, on the one side. It must equally be borne in mind though that this Court must ever be conscious of the risk inherent in its being considered as a mere subservient instrument of government policy, however admittedly salutary or desirable. There is still the need to demonstrate that the conclusion reached by it in cases appropriate for its determination has support in the law that must be applied. To my mind that was the norm followed, the conclusion reached being that the three petitions be dismissed. I am in agreement. It is with regret however that based on my reading of past decisions, both Philippine and American, and more specifically my concurring opinion in Aquino v. Ponce

Enrile, I must dissent from the proposition set forth in the able and scholarly opinion of Justice Martin that there is concentration of power in the President during a crisis government. Consequently, I cannot see my way clear to accepting the view that the authority to propose amendments is not open to question. At the very least, serious doubts could be entertained on the matter.

1. With due respect then, I have to dissociate myself from my brethren who would rule that governmental powers in a crisis government, following Rossiter, "are more or less concentrated in the President." Adherence to my concurring and dissenting opinion in *Aquino v. Ponce Enrile*[6] leaves me no choice.

It must be stated at the outset that with the sufficiency of doctrines supplied by our past decisions to point the way to what I did consider the appropriate response to the basic issue raised in the *Aquino* and the other habeas corpus petitions resolved jointly, it was only in the latter portion of my opinion that reference was made to United States Supreme Court pronouncements on martial law, at the most persuasive in character and rather few in number "due no doubt to the absence in the American Constitution of any provision concerning it." [7] It was understandable then that it was only after the landmark *Ex parte Milligan* case, that commentators like Cooley in 1868 and Watson in 1910 paid attention, minimal at that, to the subject. [8] It was next set forth that in the works on American constitutional law published in this century especially after the leading cases of *Sterling v. Constantin* and *Duncan v. Kahanamoku*, "there was a fuller treatment of the question of martial law." [9] While it is the formulation of Willoughby that for me is most acceptable, my opinion did take note that another commentator, Burdick, came out earlier with a similar appraisal. [10] Thus: "So-called martial law, except in occupied territory of an enemy, is merely the calling in of the aid of military forces by the executive, who is charged with the enforcement of the law, with or without special authorization by the legislature. Such declaration of martial law does not suspend the civil law, though it may interfere with the exercise of ones ordinary rights. The right to call out the military forces to maintain order and enforce the law is simply part of the police power. It is only justified when it reasonably appears necessary, and only justifies such acts as reasonably appear necessary to meet the exigency, including the arrest, or in extreme cases the killing of those who create the disorder or oppose the authorities. When the exigency is over the members of the military forces are criminally and civilly liable for acts done beyond the scope of reasonable necessity. When honestly and reasonably coping with a situation of insurrection or riot a member of the military forces cannot be made liable for his acts, and persons reasonably arrested under such circumstances will not, during the insurrection or riot, be free by writ of habeas corpus." [11] When the opinion cited Willoughby's concept of martial law, stress was laid on his being "partial to the claims of liberty." [12] This is evident in the explicit statement from his work quoted by me: "There is, then, strictly speaking, no such thing in American law as a declaration of martial law whereby military law is substituted for civil law. So-called declarations of martial law are, indeed, often made but their legal effect goes no further than to warn citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law. Some of the authorities stating substantially this doctrine are quoted in the footnote below." [13] Nor did I stop there. The words of Willis were likewise cited: "Martial law proper, that is, military law in case of insurrection, riots, and invasions, is not a substitute for the civil law, but is rather an aid to the execution of civil law. Declarations of martial law go no further than to warn citizens that the executive has called upon the military power to assist him in the maintenance of law and order. While martial law is in force, no new powers are given to the executive and no civil rights of the individual, other than the writ of habeas corpus, are suspended. The relations between the citizen and his state are unchanged." [14]

The conclusion reached by me as to the state of American federal law on the question of martial law was expressed thus: "It is readily evident that even when *Milligan* supplied the only authoritative doctrine, Burdick

and Willoughby did not ignore the primacy of civil liberties. Willis wrote after *Sterling*. It would indeed be surprising if his opinion were otherwise. After *Duncan*, such an approach becomes even more strongly fortified. Schwartz, whose treatise is the latest to be published, has this summary of what he considers the present state of American law: 'The *Milligan* and *Duncan* cases show plainly that martial law is the public law of necessity. Necessity alone calls it forth; necessity justifies its exercise; and necessity measures the extent and degree to which it may be employed. It is, the high Court has affirmed, an unbending rule of law that the exercise of military power, where the rights of the citizen are concerned, may never be pushed beyond what the exigency requires. If martial law rule survives the necessity on which alone it rests, for even a single minute, it becomes a mere exercise of lawless violence.' Further: '*Sterling v. Constantin* is of basic importance. Before it, a number of decisions, including one by the highest Court, went on the theory that the executive had a free hand in taking martial-law measures. Under them, it has been widely supposed that a martial-law proclamation was so far conclusive that any action taken under it was immune from judicial scrutiny. *Sterling v. Constantin* definitely discredits these earlier decisions and the doctrine of conclusiveness derived from them. Under *Sterling v. Constantin*, where martial law measures impinge upon personal or property rights—normally beyond the scope of military power, whose intervention is lawful only because an abnormal situation has made it necessary—the executives ipse dixit is not of itself conclusive of the necessity.' "[15]

There was likewise an effort on my part to show what for me is the legal effect of martial law being expressly provided for in the Constitution rather than being solely predicated on the common law power based on the urgent need for it because of compelling circumstances incident to the state of actual clash of arms: "It is not to be lost sight of that the basis for the declaration of martial law in the Philippines is not mere necessity but an explicit constitutional provision. On the other hand, *Milligan*, which furnished the foundation for *Sterling* and *Duncan* had its roots in the English common law. There is pertinence therefore in ascertaining its significance under that system. According to the noted English author, Dicey: "'Martial law,' in the proper sense of that term, in which it means the suspension of ordinary law and the temporary government of a country or parts of it by military tribunals, is unknown to the law of England. We have nothing equivalent to what is called in France the 'Declaration of the State of Siege,' under which the authority ordinarily vested in the civil power for the maintenance of order and police passes entirely to the army (autorite militaire). This is an unmistakable proof of the permanent supremacy of the law under our constitution.' There was this qualification: 'Martial law is sometimes employed as a name for the common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, riot, or generally of any violent resistance to the law. This right, or power, is essential to the very existence of orderly government, and is most assuredly recognized in the most ample manner by the law of England. It is a power which has in itself no special connection with the existence of an armed force. The Crown has the right to put down breaches of the peace. Every subject, whether a civilian or a soldier, whether what is called a 'servant of the government,' such for example as a policeman, or a person in no way connected with the administration, not only has the right, but is, as a matter of legal duty, bound to assist in putting down breaches of the peace. No doubt policemen or soldiers are the persons who, as being specially employed in the maintenance of order, are most generally called upon to suppress a riot, but it is clear that all loyal subjects are bound to take their part in the suppression of riots.'" [16]

Commitment to such an approach results in my inability to subscribe to the belief that martial law in terms of what is provided both in the 1935 and the present Constitutions, affords sufficient justification for the concentration of powers in the Executive during periods of crisis. The better view, considering the juristic theory on which our fundamental law rests is that expressed by Justice Black in *Duncan v. Kahanamoku*: "Legislatures and courts are not merely cherished American institutions; they are indispensable to our government." [17] If there has been no observance of such a cardinal concept at present, it is due to the fact that before the former Congress

could meet in regular session anew, the present Constitution was adopted, abolishing it and providing for an interim National Assembly, which has not been convened.[18] So I did view the matter.

2. Nor did I ignore Rossiter in my *Aquino v. Ponce Enrile* opinion. Reference was made to the first chapter on his work on Constitutional Dictatorship where he spoke of martial rule as "a device designed for use in the crisis of invasion or rebellion. It may be most precisely defined as an extension of military government to the civilian population, the substitution of the will of a military commander for the will of the people's elected government." [19] Since, for me at least, the Rossiter characterization of martial law has in it more of the common law connotation, less than duly mindful of the jural effects of its inclusion in the Constitution itself as a legitimate device for coping with emergency conditions in times of grave danger, but always subject to attendant limitations in accordance with the fundamental postulate of a charters supremacy, I felt justified in concluding: "Happily for the Philippines, the declaration of martial law lends itself to the interpretation that the Burdick, Willoughby, Willis, Schwartz formulations paying due regard to the primacy of liberty possess relevance. It cannot be said that the martial rule concept of Rossiter, latitudinarian in scope, has been adopted, even on the assumption that it can be reconciled with our Constitution. What is undeniable is that President Marcos has repeatedly maintained that Proclamation No. 1081 was precisely based on the Constitution and that the validity of acts taken thereunder could be passed upon by the Supreme Court. For me, that is quite reassuring, persuaded as I am likewise that the view of Rossiter is opposed to the fundamental concept of our polity, which puts a premium on freedom." [20]

3. Candor and accuracy compel the admission that such a conclusion has to be qualified. For in the opinion of the Court in the *aforecited Aquino v. Commission on Elections*, penned by Justice Makasiar, the proposition was expressly affirmed "that as Commander-in-Chief and enforcer or administrator of martial law, the incumbent President of the Philippines can promulgate proclamations, orders and decrees during the period of Martial Law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people and to the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a worldwide recession, inflation or economic crisis which presently threatens all nations including highly developed countries." [21] To that extent, Rossiter's view, mainly relied upon, now possesses juristic significance in this jurisdiction. What, for me at least, gives cause for concern is that with the opinion of the Court this intrusion of what I would consider an alien element in the limited concept of martial law as set forth in the Constitution would be allowed further incursion into the corpus of the law, with the invocation of the view expressed in the last chapter of his work, approving the "concentration of governmental power in a democracy [as] a corrective to the crisis inefficiencies inherent in the doctrine of the separation of powers." [22] It is to the credit of the late Professor Rossiter as an objective scholar that in the very same last chapter, just three pages later, he touched explicitly on the undesirable aspect of a constitutional dictatorship. Thus: "Constitutional Dictatorship is a dangerous thing. A declaration of martial law or the passage of an enabling act is a step which must always be feared and sometimes bitterly resisted, for it is at once an admission of the incapacity of democratic institutions to defend the order within which they function and a too conscious employment of powers and methods long ago outlawed as destructive of constitutional government. Executive legislation, state control of popular liberties, military courts, and arbitrary executive action were governmental features attacked by the men who fought for freedom not because they were inefficient or unsuccessful, but because they were dangerous and oppressive. The re-institution of any of these features is a perilous matter, a step to be taken only when the dangers to a free state will be greater if the dictatorial institution is not adopted." [23]

4. It is by virtue of such considerations that I find myself unable to share the view of those of my brethren who would accord recognition to the Rossiter concept of concentration of governmental power in the Executive during periods of crisis. This is not to lose sight of the undeniable fact that in this country through the zeal, vigor, and energy lavished on projects conducive to the general welfare, considerable progress has been achieved under martial rule. A fair summary may be found in a recent address of the First Lady before the delegates to the 1976 International Monetary Fund-World Bank Joint Annual Meeting: "The wonder is that so

much has been done in so brief a time. Since September 1972, when President Marcos established the crisis government, peace and order have been restored in a country once avoided as one of the most unsafe in the world. We have liberated millions of Filipino farmers from the bondage of tenancy, in the most vigorous and extensive implementation of agrarian reform." [24] Further, she said: "A dynamic economy has replaced a stagnant order, and its rewards are distributed among the many, not hoarded by a few. Our foreign policy, once confined by fear and suspicion to a narrow alley of self-imposed isolation, now travels the broad expressways of friendship and constructive interaction with the whole world, these in a new spirit of confidence and self-reliance. And finally, forced to work out our own salvation, the Filipino has re-discovered the well-springs of his strength and resiliency. As Filipinos, we have found our true identity. And having broken our crisis of identity, we are no longer apologetic and afraid." [25] The very idea of a crisis, however, signifies a transitory, certainly not a permanent, state of things. President Marcos accordingly has not been hesitant in giving utterance to his conviction that full implementation of the modified parliamentary system under the present Constitution should not be further delayed. The full restoration of civilian rule can thus be expected. That is more in accord with the imperatives of a constitutional order. It should not go unnoticed either that the President has referred to the present regime as one of "constitutional authoritarianism." That has a less objectionable ring, authority being more identified with the idea of law, as based on right, the very antithesis of naked force, which to the popular mind is associated with dictatorship, even if referred to as "constitutional."

For me likewise, that equally eminent scholar Corwin, also invoked in the opinion of the Court, while no doubt a partisan of a strong Presidency, was not averse to constitutional restraints even during periods of crisis. So I would interpret this excerpt from the fourth edition of his classic treatise on the Presidency: "A regime of martial law may be compendiously, if not altogether accurately, defined as one in which the ordinary law, as administered by the ordinary courts, is superseded for the time being by the will of a military commander. It follows that, when martial law is instituted under national authority, it rests ultimately on the will of the President of the United States in his capacity as Commander-in-Chief. It should be added at once, nevertheless, that the subject is one in which the record of actual practice fails often to support the niceties of theory. Thus, the employment of the military arm in the enforcement of the civil law does not invariably, or even usually, involve martial law in the strict sense, for, as was noted in the preceding section, soldiers are often placed simply at the disposal and direction of the civil authorities as a kind of supplementary police, or posse comitatus; on the other hand, by reason of the discretion that the civil authorities themselves are apt to vest in the military in any emergency requiring its assistance, the line between such an employment of the military and a regime of martial law is frequently any but a hard and fast one. And partly because of these ambiguities the conception itself of martial law today bifurcates into two conceptions, one of which shades off into military government and the other into the situation just described, in which the civil authority remains theoretically in control although dependent on military aid. Finally, there is the situation that obtained throughout the North during the Civil War, when the privilege of the writ of habeas corpus was suspended as to certain classes of suspects, although other characteristics of martial law were generally absent." [26]

It is by virtue of the above considerations that, with due respect to the opinion of my brethren, I cannot yield assent to the Rossiter view of concentration of governmental powers in the Executive during martial law.

5. There is necessity then, for me at least, that the specific question raised in all three petitions be squarely faced. It is to the credit of the opinion of the Court that it did so. The basic issue posed concerns the boundaries of the power of the President during this period of martial law, more precisely whether it covers proposing amendments to the Constitution. There is the further qualification if the stand of respondents be taken into account that the interim National Assembly has not been convened and is not likely to be called into session in deference to the wishes of the people as expressed in three previous referenda. It is the ruling of the majority that the answer be in the affirmative, such authority being well within the area of presidential competence. Again I find myself unable to join readily in that conviction. It does seem to me that the metes and bounds of

the executive domain, while still recognizable, do appear blurred. This is not to assert that there is absolutely no basis for such a conclusion, sustained as it is by a liberal construction of the principle that underlies *Aquino v. Commission on Elections* as to the validity of the exercise of the legislative prerogative by the President as long as the interim National Assembly is not convened. For me, the stage of certitude has not been reached. I cannot simply ignore the vigorous plea of petitioners that there is a constitutional deficiency consisting in the absence of any constituent power on the part of the President, the express provision of the Constitution conferring it on the interim National Assembly.[27] The learned advocacy reflected in the pleadings as well as the oral discourse of Solicitor General Estelito P. Mendoza[28] failed to erase the grave doubts in my mind that the *Aquino* doctrine as to the possession of legislative competence by the President during this period of transition with the interim lawmaking body not called into session be thus expanded. The majority of my brethren took that step. I am not prepared to go that far. I will explain why.

The way, for me, is beset with obstacles. In the first place, such an approach would lose sight of the distinction between matters legislative and constituent. That is implicit in the treatise on the 1935 Constitution by Justices Malcolm and Laurel.[29] In their casebook[30] published the same year, one of the four decisions on the subject of constitutional amendments is *Effingham v. Dye*[31] which categorically distinguished between constituent and legislative powers. Dean Sinco, a well-known authority on the subject, was quite explicit. Thus: "If there had been no express provision in the Constitution granting Congress the power to propose amendments, it would be outside its authority to assume that power. Congress may not claim it under the general grant of legislative power for such grant does not carry with it the right 'to erect the state, institute the form of its government,' which is considered a function inherent in the people. Congressional law-making authority is limited to the power of approving the laws 'of civil conduct relating to the details and particulars of the government instituted,' the government established by the people." [32] If that distinction be preserved, then for me the *aforecited Aquino* decision does not reach the heart of the matter.

Nor is this all. In the main opinion of Justice Makasiar as well as that of the then Justice, now Chief Justice, Castro, support for the ruling that the President cannot be deemed bereft of legislative power during this transition stage is supplied by implications from explicit constitutional provisions.[33] That is not the case with the power to propose amendments. It is solely the interim National Assembly that is mentioned. That is the barrier that for me is well-nigh insurmountable. If I limit myself to entertaining doubts rather than registering a dissent on this point, it is solely because of the consideration, possessed of weight and significance, that there may be indeed in this far-from-quiescent and static period a need for amendments. I do not feel confident therefore that a negative vote on my part would be warranted. What would justify the step taken by the President, even if no complete acceptance be accorded the view that he was a mere conduit of the *barangays* on this matter, is that, as noted in both qualified concurrences by Justices Teehankee and Muñoz Palma in *Aquino*, as far as the legislative and appropriation powers are concerned, unless such authority be recognized, there may be paralyzation of governmental activities. While not squarely applicable, such an approach has, to my mind, a persuasive quality as far as the power to propose amendments is concerned.

Thus I would confine myself to the expression of serious doubts on the question rather than a dissent.

6. The constitutional issue posed as thus viewed leaves me free to concur in the result that the petitions be dismissed. That is to accord respect to the principle that judicial review goes no further than to checking clear infractions of the fundamental law, except in the field of human rights where a much greater vigilance is required. That is to make of the Constitution a pathway to rather than a barrier against a desirable objective. As shown by my concurring and dissenting opinion in *Tolentino v. Commission on Elections*, [34] a pre-martial law decision, the fundamental postulate that sovereignty resides in the people [35] exerts a compelling force requiring the judiciary to refrain as much as possible from denying the people the opportunity to make known their wishes on matters of the utmost import for the life of the nation, Constitutional amendments fall in that

category. I am fortified in that conviction by the teaching of persuasive American decisions.[36]

There is reinforcement to such a conclusion from retired Chief Justice Concepcion's concurring and dissenting opinion in *Aytona v. Castillo*,[37] which I consider applicable to the present situation. These are his words: "It is well settled that the granting of writs of prohibition and mandamus is ordinarily within the sound discretion of the courts, to be exercised on equitable principles, and that said writs should be issued when the right to the relief is clear * * *." [38] As he noted in his ponencia in the later case of *Gonzales v. Hechanova*,[39] an action for prohibition, while petitioner was sustained in his stand, no injunction was issued. This was evident in the dispositive portion where judgment was rendered "declaring that respondent Executive Secretary had and has no power to authorize the importation in question; that he exceeded his jurisdiction in granting said authority; that said importation is not sanctioned by law and is contrary to its provisions; and that, for lack of the requisite majority, the injunction prayed for must be and is, accordingly, denied." [40] With the illumination thus supplied, it does not necessarily follow that even a dissent on my part would necessarily compel that I vote for the relief prayed for. Certainly this is not to belittle in any way the action taken by petitioners in filing these suits. That, for me, is commendable. It attests to their belief in the rule of law. Even if their contention as to lack of presidential power be accepted in their entirety, however, there is still discretion that may be exercised on the matter, prohibition being an equitable remedy. There are, for me, potent considerations that argue against acceding to the plea. With the prospect of the interim National Assembly being convened being dim, if not non-existent, if only because of the results in three previous referenda, there would be no constitutional agency other than the Executive who could propose amendments which, as noted, may urgently press for adoption. Of even greater weight, to my mind, is the pronouncement by the President that this plebiscite is intended not only to solve a constitutional anomaly with the country devoid of a legislative body but also to provide the machinery by which the termination of martial law could be hastened. That is a consummation devoutly to be wished. That does militate strongly against the stand of petitioners. The obstruction they would pose may be fraught with pernicious consequences.

It may not be amiss to refer anew to what I deem the cardinal character of the jural postulate explicitly affirmed in both the 1935 and the present Constitutions that sovereignty resides in the people. So I made clear in *Tolentino v. Commission on Elections* and thereafter in my dissent in *Javellana v. The Executive Secretary* [41] and my concurrence in *Aquino v. Commission on Elections*. [42] The destiny of the country lies in their keeping. The role of leadership is not to be minimized. It is crucial; it is of the essence. Nonetheless, it is their will, if given expression in a manner sanctioned by law and with due care that there be no mistake in its appraisal, that should be controlling. There is all the more reason then to encourage their participation in the power process. That is to make the regime truly democratic. Constitutional orthodoxy requires, however, that the fundamental law be followed. So I would interpret *Laski*, [43] *Corwin*, [44] *Lerner*, [45] *Bryn-Jones*, [46] and *McIver*. [47]

7. There is reassurance in the thought that this Court has affirmed its commitment to the principle that the amending process gives rise to a justiciable rather than a political question. So it has been since the leading case of *Gonzales v. Commission on Elections*. [48] It has since then been followed in *Tolentino v. Commission on Elections*, [49] *Planas v. Commission on Elections*, [50] and lastly, in *Javellana v. The Executive Secretary*. [51] This Court did not heed the vigorous plea of the Solicitor General to resurrect the political question doctrine announced in *Mabanag v. Lopez Vito*. [52] This is not to deny that the federal rule in the United States as set forth in the leading case of *Coleman v. Miller*, [53] a 1939 decision, and relatively recent State court decisions, supply ammunition to such a contention. [54] That may be the case in the United States, but certainly not in this jurisdiction. Philippine constitutional tradition is to the contrary. It can trace its origin to these words in the valedictory address before the 1934-35 Constitutional Convention by the illustrious Claro M. Recto: "It is one of the paradoxes of democracy that the people at times place more confidence in instrumentalities of the State other than those directly chosen by them for the exercise of their

sovereignty." [55] It can be said with truth, therefore, that there has invariably been a judicial predisposition to activism rather than self-restraint. The thinking all these years has been that it goes to the heart of constitutionalism. It may be said that this Court has shunned the role of a mere interpreter; it did exercise at times creative power. It has to that extent participated in the molding of policy. It has always recognized that in the large and undefined field of constitutional law, adjudication partakes of the quality of statecraft. The assumption has been that just because it cannot by itself guarantee the formation, much less the perpetuation of democratic values or, realistically, it cannot prevail against the pressure of political forces if they are bent in other directions, it does not follow that it should not contribute its thinking to the extent that it can. It has been asked, it will continue to be asked, to decide momentous questions at each critical stage of this nation's life.

There must be, however, this caveat. Judicial activism gives rise to difficulties in an era of transformation and change. A society in flux calls for dynamism in the law, which must be responsive to the social forces at work. It cannot remain static. It must be sensitive to life. This Court then must avoid the rigidity of legal ideas. It must resist the temptation of wallowing in the wasteland of meaningless abstractions. It must face stubborn reality. It has to have a feel for the complexities of the times. This is not to discount the risk that it may be swept too far and too fast in the surge of novel concepts. The past too is entitled to a hearing; it cannot just be summarily ignored. History still has its uses. It is not for this Court to renounce the virtue of systematic jural consistency. It cannot simply yield to the sovereign sway of the accomplished fact. It must be deaf to the dissonant dialectic of what appears to be a splintered society. It should strive to be a factor for unity under a rule of law. There must be, on its part, awareness of the truth that a new juridical age born before its appointed time may be the cause of unprecedented travail that may not end at birth. It is by virtue of such considerations that I did strive for a confluence of principle and practicality. I must confess that I did approach the matter with some misgivings and certainly without any illusion of omniscience. I am comforted by the thought that immortality does not inhere in judicial opinions.

8. I am thus led by my studies on the subject of constitutional law and, much more so, by previous judicial opinions to concur in the dismissal of the petitions. If I gave expression to views not currently fashionable, it is solely due to deeply-ingrained beliefs. Certainly, I am the first to recognize the worth of the social and economic reforms so needed by the troubled present that have been introduced and implemented. There is no thought then of minimizing, much less of refusing to concede, the considerable progress that has been made and the benefits that have been achieved under this Administration. Again, to reiterate one of my cherished convictions, I certainly approve of the adherence to the fundamental principle of popular sovereignty, which, to be meaningful, however, requires both freedom in its manifestation and accuracy in ascertaining what it wills. Then, too, it is fitting and proper that a distinction was made between two aspects of the coming poll, the referendum and the plebiscite. It is only the latter that is impressed with authoritative force. So the Constitution requires. Lastly, there should be, as I did mention in my concurrence in *Aquino v. Commission on Elections*, [56] full respect for free speech and press, free assembly and free association. There should be no thought of branding the opposition as the enemy and the expression of its views as anathema. Dissent, it is fortunate to note, has been encouraged. It has not been identified with disloyalty. That ought to be the case, and not solely due to presidential decrees. Constructive criticism is to be welcomed not so much because of the right to be heard but because there may be something worth hearing. That is to ensure a true ferment of ideas, an interplay of knowledgeable minds. There are, though, well-defined limits. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. What I mean to stress is that except on a showing of clear and present danger, there must be respect for the traditional liberties that make a society truly free.

[1] L-35925, January 22, 1973, 49 SCRA 105. The other cases disposed of by the Court are not referred to.

[2] L-36142, March 31, 1973, 50 SCRA 30. Again, no reference is made to the other petitions raising the same

question as to the validity of Proclamation No. 1102 announcing the ratification of the Constitution proposed by the Constitutional Convention.

[3] L-35546, September 17, 1974, 59 SCRA 183. It must be noted that there were other petitions decided likewise seeking the nullification of Proclamation No. 1081 declaring martial law.

[4] L-40004, January 31, 1975, 62 SCRA 275. This decision affirmed the power of the incumbent President to issue decrees having the force and effect of law. There was in the main opinion in this case, penned by Justice Makasiar, an explicit recognition that the incumbent President possesses legislative competence so that during the period of Martial Law he could assure "the security and preservation of the Republic, * * * the defense of the political and social liberties of the people and * * * the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat there-of as well as to meet the impact of a worldwide recession, inflation or economic crisis which presently threatens all nations including highly developed countries * * *" (At 298) Justices Antonio, Esguerra, Fernandez, Muñoz Palma and Aquino concurred, although in a separate opinion, Justice Muñoz Palma qualified it by saying that the grant of legislative power "is necessarily to fill up a vacuum during the transition period when the interim National Assembly is not yet convened and functioning, for otherwise, there will be a disruption of official functions resulting in a collapse of the government and of the existing social order." (At 347) There was likewise a concurring opinion by the then Justice, now Chief Justice, Castro that such competence is derived from paragraphs 1 and 2 of Sec. 3 of the Transitory Provisions of the Constitution. The then Chief Justice Makalintal and Justices Barredo, Antonio, Esguerra and Fernandez concurred with this opinion. In a concurring and dissenting opinion, Justice Teehankee would confine "his legislative and appropriation powers under martial law to the law of necessity of preservation of the state which gave rise to its proclamation (including appropriations for operations of the government and its agencies and instrumentalities)." (At 316-317) The writer of this opinion had his own concurrence and predicated his vote without an expression of his views as to the grant of legislative power to the President.

[5] L-37364, May 9, 1975, 63 SCRA 546. The Court ruled in this case that military commissions may try civilians for certain specified offenses according to applicable presidential decrees.

[6] 59 SCRA 183, 281-309.

[7] Ibid, 301.

[8] Ibid. Ex parte Milligan is reported in 4 Wall. 2 (1866). It was likewise noted that Story, the first eminent commentator in American constitutional law made no reference to martial law. Cooleys work, now in its 8th edition, is entitled Constitutional Limitations while that of Watson bears the title of Constitution of the United States. At 302.

[9] Ibid. Sterling is found in 287 US 378 (1932) and Duncan in 327 US 304 (1946). Among the casebooks on constitutional law referred to are those by Dodd (1949), Dowling (1950), Sholley (1951), Frank (1932), Freund and Associates (1954), Barrett and Associates (1963), Kauper (1966), Lockhart and Associates (1970).

[10] Ibid. It may be observed parenthetically that when I collaborated with Senator Lorenzo M. Tañada in the Constitution of the Philippines Annotated published almost thirty years ago in 1947 (at 588-589) with two later editions that came out in 1949 (at 694-695) and 1953 (at 1013-1014), it was Willoughbys view that was cited.

[11] Ibid, 302-303. This was the formulation of Burdick in his The Law of the American Constitution, 261 (1922).

[12] Ibid, 303.

[13] Ibid. The citation is from Willoughby on the Constitution of the United States, 2nd ed. 1591 (1929).

[14] Ibid. The excerpt is from Willis on Constitutional Law, 449 (1936). It is to be made clear that in our Constitution, it is only the privilege of the writ, not the writ itself that is suspended.

[15] Ibid, 303-304. The quotation is from volume 2 of the treatise of Schwartz on the American Constitution, entitled The Powers of Government 244 (1963) that the citation came from.

[16] Ibid. The reference is to Dicey on the Law of the Constitution, 287-288 (1962).

[17] 327 US 304, 322.

[18] Cf. Aquino v. Commission on Elections, 62 SCRA 275.

[19] Ibid, 305. The citation from Rossiter is from the first chapter of his work on Constitutional Dictatorship, 9 (1948).

[20] Ibid, 306.

[21] 62 SCRA 275, 298. Justice Makasiar cited pages 7 and 303 of Rossiter's Constitutional Dictatorship.

[22] The extensive citation in the opinion of Justice Martin is found in Chapter XIX of Rossiter's opus entitled Constitutional Dictatorship: The Forms, The Dangers, The Criteria, The Future. That is the last chapter of his work, after a rather exhaustive discussion of what are referred to by him as Constitutional Dictatorship in Germany (Chapters III to V), Crisis Government in the French Republic (Chapters VI to IX), Crisis Government in Great Britain (Chapters X to XIII) and Crisis Government in the United States (Chapters XIV to XVIII).

[23] Ibid, 294.

[24] Imelda Romualdez Marcos, The Filipino Between Two Worlds, Philippines Daily Express 10, October 9, 1976.

[25] Ibid.

[26] Corwin, The President Office and Powers, 4th rev. ed., 139-140 (1957).

[27] According to Art. XVII, Sec. 15 of the present Constitution: "The interim National Assembly, upon special call by the interim Prime Minister, may, by a majority vote of all its Members, propose amendments to this Constitution. Such amendments shall take effect when ratified in accordance with Article Sixteen hereof."

[28] He was assisted by Assistant Solicitor General Hugo E. Gutierrez Jr. and Trial Attorney Nannette R. de Castro.

[29] Malcolm and Laurel, Philippine Constitutional Law, 3rd ed., 20-21 (1936).

[30] Malcolm and Laurel, Cases on Constitutional Law (1936).

[31] Ibid. Ellingham v. Dye is reported in 99 NE 1 (1912).

[32] Sinco, Philippine Political Law, 11th ed. 63 (1962). It is precisely Ellingham v. Dye that was cited.

[33] Justice Makasiar referred to Article XVII, Sec. 3, par. 2 of the present Constitution. The present Chief Justice would include paragraph 1 to the above. Vide jn. 4.

[34] L-34150, October 16, 1951, 41 SCRA 702.

[35] According to Article II, Section 1 of the present Constitution: "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them."

[36] Cf. *Cranmer v. Thorson*, 68 NE 202 (1896); *Edwards v. Lesueur*, 83 SW 1130 (1896); *People v. Mills*, 70 P 322 (1902); *Threadgill v. Cross*, 109 P 558 (1910); *Scott v. James*, 76 SE 283 (1912); *Weinland v. Fulton*, 121 NE 816 (1918); *Gray v. Mass*, 156 So. 262 (1934); *Gray v. Winthrop*, 156 So. 270 (1934); *State v. Burns*, 172 SW2 259 (1943); *Hillman v. Stockett*, 39 A2 803 (1944).

[37] L-19313, January 19, 1962, 4 SCRA 1.

[38] *Ibid*, 17-18.

[39] L-21897, October 22, 1964, 9 SCRA 230.

[40] *Ibid*, 244.

[41] 50 SCRA 30, 310-333 (1973).

[42] 59 SCRA 275, 306-315 (1974).

[43] Laski, *Grammar of Politics*, 4th ed., 34 (1937).

[44] Corwin, *The Higher Law Background of American Constitutional Law*, Selected Essays on Constitutional Law 3 (1938).

[45] Lerner, *Ideas are Weapons*, 470 (1939).

[46] Bryn-Jones, *Toward a Democratic New Order* 23 (1945).

[47] McIver, *The Web of Government* 84 (1947).

[48] L-28916, November 9, 1967, 21 SCRA 774.

[49] L-34150, October 16, 1971, 41 SCRA 702.

[50] 50/ L-35925, January 22, 1973, 49 SCRA 105.

[51] L-36142, March 31, 1973, 50 SCRA 30. If I read correctly the concurring opinion of the then Chief Justice Makalintal and the now Chief Justice Castro, then an Associate Justice, where the question raised concerns the adoption and enforcement of a new Constitution, then it may be looked upon as political.

[52] 78 Phil. 1 (1947). To be more precise, there were only five Justices, headed by Justice Tuason, with the then Chief Justice Moran and the then Justices Paras, later himself a Chief Justice, Hilado, Pablo and Hontiveros, who were of that persuasion. The other two votes necessary for a majority for dismissing the prohibition petition were supplied by Justice, also later a Chief Justice, Bengzon and Justice Padilla.

[53] 307 US 433. In the concurring opinion of Justice Black, with Justices Roberts, Frankfurter and Douglas in agreement, he made the categorical statement that such process "is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." At 459.

[54] Cf. *Hatcher v. Meredith*, 173 SW2d 665 (1943); *In re Application of Borg*, 35 A2d 220 (1944); *Renck v. Superior Court of Maricopa County*, 187 P2d 656 (1947); *In re Opinion of Justices*, 47 SO2d 643 (1950); *Funk v. Fielder*, 243 SW2d 474 (1951); *Baum v. Newbry*, 267 P2d 220 (1954); *Boe v. Foss*, 77 NW2d1(1956); *Goldner v. Adams*, 167 SO2d 575 (1964); *Hamilton v. City of Shreveport*, 174 SO2d 529 (1965).

[55] Laurel, S., ed., *VII Proceedings of the Philippine Constitutional Convention (1934-1935)*, Appendix L, 800.

[56] 62 SCRA 275, 306-315.

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Concurring and Dissenting

MAKASIAR, J.:

Since the validity or effectivity of the proposed amendments is to be decided ultimately by the people in their sovereign capacity, the question is political as the term is defined in *Tañada, et al. vs. Cuenco, et al.* (103 Phil. 1051), which is a bar to any judicial inquiry, for the reasons stated in Our opinion in *Javellana, et al. vs. Executive Secretary, et al.* (L-36142); *Tan, et al. vs. Executive Secretary, et al.* (L-36164); *Roxas, et al. vs. Executive Secretary, et al.* (L-36165); *Monteclaro, etc., et al. vs. Executive Secretary, et al.* (L-36236); and *Dilag, et al. vs. Executive Secretary, et al.* (L-36283, March 31, 1973, 50 SCRA 30, 204-283). The procedure for amendment is not important. Ratification by the people is all that is indispensable to validate an amendment. Once ratified, the method of making the proposal and the period for submission become irrelevant.

The contrary view negates the very essence of a republican democracy -- that the people are sovereign -- and renders meaningless the emphatic declaration in the very first provision of Article II of the 1973 Constitution that the Philippines is a republican state, sovereignty resides in the people and all government authority emanates from them. It is axiomatic that sovereignty is illimitable. The representatives cannot dictate to the sovereign people. They may guide them; but they cannot supplant their judgment. Such an opposite view likewise distrusts the wisdom of the people as much as it despises their intelligence. It evinces a presumptuous pretension to intellectual superiority. There are thousands upon thousands among the citizenry, who are not in the public service, who are more learned and better skilled than many of their elected representatives.

Moreover, WE already ruled in *Aquino, et al. vs. Comelec, et al.* (L-40004, Jan. 31, 1975, 62 SCRA 275, 298-302) that the President as enforcer or administrator of martial rule during the period of martial law can legislate; and that he has the discretion as to when to convene the interim National Assembly depending on prevailing conditions of peace and order. In view of the fact that the interim National Assembly has not been convoked in obedience to the desire of the people clearly expressed in the 1973 referendum, the President therefore remains the lone law-making authority while martial law subsists. Consequently, he can also exercise the power of the interim National Assembly to propose amendments to the New Constitution (Sec. 15, Art. XVII). If, as conceded by petitioner Vicente Guzman (L-44684), former delegate to the 1971 Constitutional Convention which drafted the 1973 Constitution, the President, during the period of martial law, can call a constitutional convention for the purpose, admittedly a constituent power, it stands to reason that the President can likewise legally propose amendments to the fundamental law.

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separate dissenting opinion

MUÑOZ PALMA, J.:

I concur fully with the remarkably frank (so characteristic of him) dissenting opinion of my distinguished colleague, Justice Claudio Teehankee. If I am writing this brief statement it is only to unburden myself of some thoughts which trouble my mind and leave my conscience with no rest nor peace.

Generally, one who dissents from a majority view of the Court takes a lonely and at times precarious road, the burden being lightened only by the thought that in this grave task of administering justice, when matters of conscience are at issue, one must be prepared to espouse and embrace a rightful cause however unpopular it may be.

1. That sovereignty resides in the people and all government authority emanates from them is a fundamental, basic principle of government which cannot be disputed, but when the people have opted to govern themselves under the mantle of a written Constitution, each and every citizen, from the highest to the lowliest, has the sacred duty to respect and obey the Charter they have so ordained.

"By the Constitution which they establish, they not only tie up the hands of their official agencies, but their own hands as well; and neither the officers of the state, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law." (Cooley's Constitutional Limitations, 7th Ed. p. 56, Underline Ours)

The afore-quoted passage from the eminent jurist and author Judge Cooley, although based on declarations of law of more than a century ago, lays down a principle which to my mind is one of the enduring cornerstones of the Rule of Law. It is a principle with which I have been familiar as a student of law under the tutelage of revered Professors, Dr. Vicente G. Sinco and Justice Jose P. Laurel, and which I pray will prevail at all times to ensure the existence of a free, stable, and civilized society.

The Filipino people, wanting to ensure to themselves a demo-cratic republican form of government, have promulgated a Constitution whereby the power to govern themselves has been entrusted to and distributed among three branches of government; they have also mandated in clear and unmistakable terms the method by which provisions in their fundamental Charter may be amended or revised. Having done so, the people are bound by these constitutional limitations. For while there is no surrender or abdication of the people's ultimate authority to amend, revise, or adopt a new Constitution, sound reason demands that they keep themselves within the procedural bounds of the existing fundamental law. The right of the people to amend or change their Constitution if and when the need arises is not to be denied, but we assert that absent a revolutionary state or condition in the country, the change must be accomplished through the ordinary, regular and legitimate processes provided for in the Constitution.[1]

I cannot subscribe therefore to the view taken by the Solicitor General that the people, being sovereign, have the authority to amend the Constitution even in a manner different from and contrary to that expressly provided for in that instrument, and that the amendatory process is intended more as a limitation of a power rather than a grant of power to a particular agency and it should not be construed as limiting the ultimate sovereign will of the people to decide on amendments to the Constitution.[2] Such a view will seriously undermine the very existence of a constitutional government and will permit anarchy and/or mob rule to set afoot and prevail. Was it the Greek philosopher Plato who warned that the rule of the mob is a prelude to the rule of the tyrant?

I would use the following excerpt from Bernas, S.J., "The 1973 Philippine Constitution, Notes and Cases" as

relevant to my point:

"... the amendatory provisions are called a 'constitution of sovereignty' because they define the constitutional meaning of 'sovereignty of the people.' Popular sovereignty, as embodied in the Philippine Constitution, is not extreme popular sovereignty. As one American writer put it:

'A constitution like the American one serves as a basic check upon the popular will at any given time. It is the distinctive function of such written document to classify certain things as legal fundamentals; these fundamentals may not be changed except by the slow and cumbersome process of amendment. The people themselves have decided, in constitutional convention assembled, to limit themselves and future generations in the exercise of the sovereign power which they would otherwise possess. And it is precisely such limitation that enables those subject to governmental authority to appeal from the people drunk to the people sober, in time of excitement and hysteria. The Constitution, in the neat phrase of the Iowa court, is the protector of the people against injury by the people.'***

Truly, what need is there for providing in the Constitution a process by which the fundamental law may be amended if, after all, the people by themselves can set the same at naught even in times of peace when civil authority reigns supreme?

To go along with the respondents' theory in this regard is to render written Constitutions useless or mere "ropes of sand", allowing for a government of men instead of one of laws. For it cannot be discounted that a situation may arise where the people are heralded to action at a point of a gun or by the fiery eloquence of a demagogue, and where passion overpowers reason, and mass action overthrows legal processes.

History has recorded such instances, and I can think of no better example than that of Jesus Christ of Judea who was followed and loved by the people while curing the sick, making the lame walk and the blind see, but shortly was condemned by the same people turned into fanatic rabble crying out "Crucify Him, Crucify Him" upon being incited into action by chief priests and elders of Jerusalem.

Yes, to quote once more from Judge Cooley:

"A good Constitution should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought which alone, if the government is to be safe, can be allowed efficiency. Changes in government are to be feared unless the benefit is certain."

(quoted in *Ellingham v. Dye*, 99 N.E. 1, 15)[3]

2. Presidential Decrees Nos. 991 and 1033 which call for a national referendum-plebiscite on October 16, 1976 for the purpose, among other things, of amending certain provisions of the 1973 Constitution are null and void, as they contravene the express provisions on the amending process of the 1973 Constitution laid down in Article XVI, Section 1 (1) and Article XVII, Section 15, more particularly the latter which applies during the present transition period. The Opinion of Justice Teehankee discusses in detail this particular matter.

I would just wish to stress the point that although at present there is no interim National Assembly which may propose amendments to the Constitution, the existence of a so-called "vacuum" or "hiatus" does not justify a transgression of the constitutional provisions on the manner of amending the fundamental law. We cannot cure one infirmity -- the existence of a "vacuum" caused by the non-convening of the interim National Assembly -- with another infirmity, that is, doing violence to the Charter.

"All great mutations shake and disorder a state. Good does not necessarily succeed evil; another evil may succeed and a worse." (Am. Law Rev. 1889, p. 311., quoted in *Ellingham v. Dye*, supra, p. 15)

Respondents contend that the calling of the referendum-plebiscite for the purpose indicated is a step necessary to restore the state of normalcy in the country. To my mind, the only possible measure that will lead our country and people to a condition of normalcy is the lifting or ending of the state of martial law. If I am constrained to make this statement it is because so much stress was given during the hearings of these cases on this particular point, leaving one with the impression that for petitioners to contest the holding of the October 16 referendum-plebiscite is for them to assume a position of blocking or stalling the lifting of martial law, which I believe is unfair to the petitioners. Frankly, I cannot see the connection between the two. My esteemed colleagues should pardon me therefore if I had ventured to state that the simple solution to the present dilemma is the lifting of martial law and the implementation of the constitutional provisions which will usher in the parliamentary form of government ordained in the Constitution which, as pro-claimed in Proclamation 1102, the people themselves have ratified.

If the people have indeed ratified the 1973 Constitution, then they are bound by their act and cannot escape from the pretended unfavorable consequences thereof, the only remedy being to set in motion the constitutional machinery by which the supposed desired amendments may properly be adopted and submitted to the electorate for ratification.

Constitutional processes are to be observed strictly, if we have to maintain and preserve the system of government decreed under the fundamental Charter. As said by Justice Enrique Fernando in *Mutuc vs. Commission on Elections*:

".... The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy." (36 SCRA, 228, 234, underline Ours)

A contrary view would lead to disastrous consequences for, in the words of Chief Justice Cox of the Supreme Court of Indiana in *Effingham v. Dye*, (supra, p. 7) liberty and popular sovereignty are not meant to give rein to passion or thoughtless impulse but to allow the exercise of power by the people for the general good under constant restraints of law.

3. The true question before Us is one of power. Does the incumbent President of the Philippines possess constituent powers? Again, the negative answer is explained in detail in the dissenting opinion of Justice Teehankee.

Respondents would justify the incumbent President's exercise of constituent powers on the theory that he is vested with legislative powers as held by this Court in *Benigno S. Aquino, Jr., et al. vs. Commission on Elections, et al.*, L-40004, January 31, 1975. I wish to stress that although in my separate opinion in said case I agreed that Section 3 (2) of the Transitory provisions grants to the incumbent President legislative powers, I qualified my statement as follows:

".... As to, whether or not, this unlimited legislative power of the President continues to exist even after the ratification of the Constitution is a matter which I am not ready to concede at the moment, and which at any rate I believe is not essential in resolving this Petition for reasons to be given later. Nonetheless, I hold the view that the President is empowered to issue proclamations, orders, decrees, etc. to carry out and implement the objectives of the proclamation of martial law be it under the 1935 or 1973 Constitution, and for the orderly and efficient functioning of the government, its instrumentalities, and agencies. This grant of legislative power is necessary to fill up a vacuum during the transition period when the interim National Assembly is not yet convened and functioning, for otherwise, there will be a disruption of official functions resulting in a collapse of the government and of the existing social order." (62 SCRA, pp. 275, 347)

I believe it is not disputed that legislative power is essentially different from constituent power: one does not

encompass the other unless so specified in the Charter, and the 1973 Constitution contains provisions in this regard. This is well-explained in Justice Teehankee's Opinion. The state of necessity brought about by the current political situation, invoked by the respondents, provides no source of power to propose amendments to the existing Constitution. Must we "bend the Constitution to suit the law of the hour?"[4] or cure its defects "by inflicting upon it a wound which nothing can heal," commit one assault after the other "until all respect for the fundamental law is lost and the powers of government are just what those in authority please to call them?"[5] Or can we now ignore what this Court, speaking through Justice Barredo, said in *Tolentino vs. Comelec*:

".... let those who would put aside, invoking grounds at best controversial, any mandate of the fundamental law purportedly in order to attain some laudable objective bear in mind that someday somehow others with purportedly more laudable objectives may take advantage of the precedent and continue the destruction of the Constitution, making those who laid down the precedent of justifying deviations from the requirements of the Constitution the victims of their own folly."[6]

Respondents emphatically assert that the final word is the people's word and that ultimately it is in the hands of the people where the final decision rests. (Comment, pp. 18, 19, 22) Granting in *gratia argumenti* that it is so, let it be an expression of the will of the people under a normal political situation and not under the aegis of martial rule for as I have stated in *Aquino vs. Comelec, et al.*, *supra*, a referendum (and now a plebiscite) held under a regime of martial law can be of no far reaching significance because it is being accomplished under an atmosphere or climate of fear as it entails a wide area of curtailment and infringement of individual rights, such as, human liberty, property rights, rights of free expression and assembly, protection against unreasonable searches and seizures, liberty of abode and of travel, and so on.

4. The other issues such as the sufficiency and proper submission of the proposed amendments for ratification by the people are expounded in Justice Teehankee's Opinion. I wish to stress indeed that it is incorrect to state that the thrust of the proposed amendments is the abolition of the interim National Assembly and its substitution with an "interim Batasang Pambansa", for that is not all. Proposed amendment No. 6 will permit or allow the concentration of power in one man - the Executive - Prime Minister or President or whatever you may call him - for it gives him expressly (which the 1973 Constitution or the 1935 Constitution does not) legislative powers even during the existence of the appropriate legislative body, dependent solely on the executive's judgment on the existence of a grave emergency or a threat or imminence thereof.**

I must be forgiven if, not concerned with the present, I am haunted however by what can happen in the future, when we shall all be gone. Verily, this is a matter of grave concern which necessitates full, mature, sober deliberation of the people but which they can do only in a climate of freedom without the restraints of martial law.

I close, remembering what Claro M. Recto, President of the Constitutional Convention which drafted the 1935 Philippine Constitution, once said:

".... Nor is it enough that our people possess a written constitution in order that their government may be called constitutional. To be deserving of this name, and to drive away all danger of anarchy as well as of dictatorship whether by one man or a few, it is necessary that both the government authorities and the people faithfully observe and obey the constitution, and that the citizens be duly conversant not only with their rights but also with their duties."[7]

Jose P. Laurel who served his people as Justice of the Supreme Court of this country gave this reminder: the grave and perilous task of halting transgressions and vindicating cherished rights is reposed mainly on the judiciary and therefore let the Courts be the vestal keepers of the purity and sanctity of our Constitution.[8]

On the basis of the foregoing, I vote to declare Presidential Decrees Nos. 991 and 1033 unconstitutional and enjoin the implementation thereof.

[1] Sinco, Philippine Political Law, 10th Ed. p. 48

[2] T.S.N. of hearing, October 8, 1976, pp. 8, 11, 12, 15.

** p. 716, 1974 Ed., citing B. Schwartz, I The Powers of Government (1963) 10.

[3] see also:

Crawford v. Gilchrist, 64 Fla. 41., 59., So. 963, Ann. Cas. 1914B, 916; State v. Hall, 159 N.W., 281; Opinion of Marshall, J. in State ex rel. Postel v. Marcus, 152 N.W., 419;

From Koehler v. Hill, Vol. 15, N.W., 609, we quote:

"Day, C.J.

xxx xxx xxx

"It has been said that changes in the consti-tution may be introduced in disregard of its pro-visions; that if the majority of the people desire a change the majority must be respected, no matter how the change may be effected; and that the change, if revolution, is peaceful revolution. ...

"We fear that the advocates of this new doctrine, in a zeal to accomplish an end which the majority of the people desire, have looked at but one phase of the question, and have not fully considered the terrible consequences which would almost certainly follow a recognition of the doctrine for which they contend. It may be that the incorporation of this amendment in the constitution, even if the constitution has to be broken to accomplish it, would not of itself produce any serious results. But if it should be done by sanctioning the doctrine contended for, a precedent would be set which would plague the state for all future time. A Banquo's ghost would arise at our incantation which would not down at our bidding.

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xxx xxx xxx

"We ought to ponder long before we adopt a doctrine so fraught with danger to republican institutions."

xxx xxx xxx

"Appellants' counsel cite and rely upon section 2, art. 1, of the constitution of the state. This section is a portion of the bill of rights, and is as follows: 'All political power is inherent in the people. Govern-ment is instituted for the protection, security, and benefit of the people; and they have the right at all times to alter or reform the same, whenever the public good may require.' Abstractly considered, there can be no doubt of the correctness of the pro-positions embraced in this section. These principles are older than constitutions and older than governments. The people did not derive the rights referred to from the constitution, and, in their nature, they are such that the people cannot surrender them."

xxx xxx xxx

"It is well that the powers of the people and their relations to organized society should be understood. No heresy has ever been taught in this country so fraught with evil as the doctrine that the people have a constitutional right to disregard the constitution, and that they can set themselves above the instrumentalities appointed by the constitution for the administration of law. It tends directly to the encouragement of revolu-tion and anarchy. It is incumbent upon all who influence and mold public opinion to repudiate and discountenance so dangerous a

doctrine before it bears fruits destructive of republican institutions. It will be well if the people come to understand the difference between natural and constitutional freedom, before license becomes destructive of liberty."

(pp. 611-616)

[4] Greencastle Township v. Black, 5 Ind., 557, 565.

[5] Oakley vs. Aspinwall, 3 N.Y., 547, 568.

[6] Resolution on Motion for Reconsideration, L-34150, November 4, 1971, per Barredo, J., pp. 19-20, Supreme Court Decisions, November, 1971.

**** 6.** Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land. (Taken from the Barangay Ballot Form distributed by COMELEC for Referendum-Plebiscite, October 16, 1976)

[7] Speech upon conferment of the Doctor of Laws, Honoris Causa, by the Manila University, the Lawyers' Journal, June 15, 1936, underline Ours.

[8] The Lawyers' Journal, March 15, 1936.

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DISSENTING OPINION

TEEHANKEE, J.:

I. On the merits: I dissent from the majority's dismissal of the petitions for lack of merit and vote to grant the petitions for the following reasons and considerations:

1. It is undisputed that neither the 1935 Constitution nor the 1973 Constitution grants to the incumbent President the constituent power to propose and approve amendments to the Constitution to be submitted to the people for ratification in a plebiscite.

The 1935 Constitution expressly vests the constituent power in Congress, by a three-fourths vote of all its members, to propose amendments or call a constitutional convention for the purpose.[1]

The 1973 Constitution expressly vests the constituent power in the regular National Assembly to propose amendments (by a three-fourths vote of all its members) or "call a constitutional convention" (by a two-thirds vote of all its members) or "submit the question of calling such convention to the electorate in an election" (by a majority vote of all its members).[2]

The transitory provisions of the 1973 Constitution expressly vest the constituent power during the period of transition in the interim National Assembly "upon special call by the interim Prime Minister (the incumbent

President[3]) . . . by a majority vote of all its mem-bers (to) propose amendments".[4]

Since the Constitution provides for the organization of the essential departments of government, defines and delimits the powers of each and prescribes the manner of the exercise of such powers, and the constituent power has not been granted to but has been withheld from the President or Prime Minister, it follows that the Pre-sident's questioned decrees[5] proposing and submitting constitutional amendments directly to the people (without the intervention of the interim National Assembly in whom the power is expressly vested) are devoid of constitutional and legal basis.

2. The doctrine in the leading case of Tolentino vs. Comelec is controlling in the case at bar. In therein declaring null and void the acts of the 1971 Constitutional Convention and of the Comelec in calling a plebiscite with the general elections scheduled for November 8, 1971 for the purpose of submitting for the people's ratification an advance amendment reducing the voting age from 21 years to 18 years, and issuing writs of prohibition and injunction against the hold-ing of the plebiscite, this Court speaking through Mr. Justice Barredo ruled that

--- The Constitutional provisions on amendments[6] "dealing with the procedure or manner of amending the fundamental law are binding upon the Convention and the other departments of the government, (and) are no less binding upon the people";[7]

--- "As long as any amendment is formulated and submitted under the aegis of the present Charter, any proposal for such amendment which is not in conformity with the letter, spirit and intent of the Charter for effecting amendments, cannot receive the sanction of this Court";[8]

--- "The real issue here cannot be whether or not the amending process delineated by the present Constitution may be disregarded in favor of allowing the sovereign people to express their decision on the proposed amendments, if only because it is evident that the very idea of departing from the fundamental law is anachron-istic in the realm of constitutionalism and repugnant to the essence of the rule of law";[9] and

--- Accordingly barred the plebiscite as improper and premature, since "the provisional nature of the proposed amendment and the manner of its submission to the people for ratification or rejection" did not "conform with the mandate of the people themselves in such regard, as expressed in the Constitution itself",[10] i.e. the mandatory requirements of the amending process as set forth in the Article on Amendments.

3. Applying the above rulings of Tolentino to the case at bar, mutatis mutandis, it is clear that where the proposed amendments are violative of the Constitutional mandate on the amending process not merely for being a "partial amendment" of a "temporary or provisional character" (as in Tolentino) but more so for not being proposed and approved by the department vested by the Constitution with the constituent power to do so, and hence transgressing the substantive provision that it is only the interim National Assembly, upon special call of the interim Prime Minister, by a majority vote of all its members that may propose the amendments, the Court must declare the amendment proposals null and void.

4. This is so because the Constitution is a "superior paramount law, unchangeable by ordinary means"[11] but only by the particular mode and manner prescribed therein by the people. As stressed by Cooley, "by the Constitution which they establish, (the people) not only tie up the hands of their official agencies but their own hands as well; and neither the officers of the State, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law".[12]

The vesting of the constituent power to propose amendments in the legislative body (the regular National Assembly or the interim National Assembly during the transition period) or in a constitutional convention called for the purpose is in accordance with universal practice. "From the very necessity of the case" Cooley points out

"amendments to an existing constitution, or entire revisions of it, must be prepared and matured by some body of representatives chosen for the purpose. It is obviously impossible for the whole people to meet, prepare, and discuss the proposed alterations, and there seems to be no feasible mode by which an expression of their will can be obtained, except by asking it upon the single point of assent or disapproval." This body of representatives vested with the constituent power "sub-mits the result of their deliberations" and "puts in proper form the questions of amendment upon which the people are to pass" - for ratification or rejection.[13]

5. The Court in Tolentino thus rejected the argument "that the end sought to be achieved is to be desired" and in denying reconsideration, in paraphrase of the late Claro M. Recto, declared that "let those who would put aside, invoking grounds at best controversial, any mandate of the fundamental law purportedly in order to attain some laudable objective bear in mind that someday somehow others with purportedly more laudable objectives may take advantage of the precedent and continue the destruction of the Constitution, making those who laid down the precedent of justifying deviations from the requirements of the Constitution the victims of their own folly."

This same apprehension was echoed by now retired Justice Calixto O. Zaldivar in his dissenting opinion in the Ratification cases[14] that "We will be opening the gates for a similar disregard of the Constitution in the future. What I mean is that if this Court now declares that a new Constitution is now in force because the members of the citizens assemblies had approved said new Constitution, although that approval was not in accordance with the procedure and the requirements prescribed in the 1935 Constitution, it can happen again in some future time that some amendments to the Constitution may be adopted, even in a manner contrary to the existing Constitution and the law, and then said proposed amendments are submitted to the people in any manner and what will matter is that a basis is claimed that there was approval by the people. There will not be stability in our constitutional system, and necessarily no stability in our government."

6. It is not legally tenable for the majority, without overruling the controlling precedent of Tolentino (and without mustering the required majority vote to so overrule) to accept the proposed; amendments as valid notwithstanding their being "not in conformity with the letter, spirit and intent of the provision of the Charter for effecting amendments" on the reasoning that "If the President has been legitimately discharging the legislative functions of the interim Assembly, there is no reason why he cannot validly discharge the function of that Assembly to propose amendments to the Constitution, which is but adjunct, although peculiar, to its gross legislative functions." [15]

In the earlier leading case of Gonzales vs. Comelec[16], this Court speaking through now retired Chief Justice Roberto Concepcion, pointed out that "Indeed, the power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress"[17] or to the National Assembly.[18] Were it not for the express grant in the Transitory Provisions of the constituent power to the interim National Assembly, the interim National Assembly could not claim the power under the general grant of legislative power during the transition period.

The majority's ruling in the Referendum cases[19] that the Transitory Provisions in section 3 (2) recognized the existence of the authority to legislate in favor of the incumbent President during the period of martial law manifestly cannot be stretched to encompass the constituent power as expressly vested in the interim National Assembly in derogation of the allotment of powers defined in the Constitution.

Paraphrasing Cooley on the non-delegation of legislative power as one of the settled maxims of constitutional law,[20] the constituent power has been lodged by the sovereign power of the people with the interim National Assembly during the transition period and there it must remain as the sole constitutional agency until the Constitution itself is changed.

As was aptly stated by Justice Jose P. Laurel in the 1936 landmark case of *Angara vs. Electoral Commission*[21], "(T)he 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".

7. Neither is the justification of "constitutional impasse" tenable. The sentiment of the people against the convening of the interim National Assembly and to have no elections for "at least seven (7) years" concededly could not amend the Constitution insofar as the interim National Assembly is concerned (since it admittedly came into existence "immediately" upon the proclamation of ratification of the 1973 Constitution), much less remove the constituent power from said interim National Assembly.

As stressed in the writer's separate opinion in the Referendum cases[22], "(W)hile it has been advanced that the decision to defer the initial convocation of the interim National Assembly was supported by the results of the referendum in January, 1973 when the people voted against the convening of the interim National Assembly for at least seven years, such sentiment cannot be given any legal force and effect in the light of the State's admission at the hearing that such referendums are merely consultative and cannot amend the Constitution or any provision or mandate thereof such as the Transitory Provisions which call for the 'immediate existence' and 'initial convening' of the interim National Assembly to 'give priority to measures for the orderly transition from the presidential to the parliamentary system' and the other urgent measures enumerated in section 5 thereof".

While the people reportedly expressed their mandate against the convening of the interim National Assembly to discharge its legislative tasks during the period of transition under martial law, they certainly had no opportunity and did not express themselves against convening the interim National Assembly to discharge the constituent power to propose amendments likewise vested in it by the people's official mandate in the Constitution.

In point of fact, when the holding of the October 16, 1976 referendum was first announced, the newspapers reported that among the seven questions proposed by the sanggunian and barangay national executive committees for the referendum was the convening of the interim National Assembly.[23]

It was further reported that the proposals which were termed tentative "will be discussed and studied by (the President), the members of the cabinet, and the security council" and that the barangays felt, notwithstanding the previous referenda on the convening of the interim National Assembly that "it is time to again ask the people's opinion of this matter." [24]

8. If proposals for constitutional amendments are now deemed necessary to be discussed and adopted for submittal to the people, strict adherence with the mandatory requirements of the amending process as provided in the Constitution must be complied with. This means, under the teaching of Tolentino that the proposed amendments must validly come from the constitutional agency vested with the constituent power to do so, namely, the interim National Assembly and not from the executive power as vested in the Prime Minister (the incumbent Pre-sident) with the assistance of the Cabinet[25] from whom such power has been withheld.

It will not do to contend that these proposals represent the voice of the people for as was aptly stated by Cooley "The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, x x x." [26]

The same argument was put forward and rejected by this Court in *Tolentino* which rejected the contention that the "Convention being a legislative body of the highest order (and directly elected by the people to speak their voice)

is sovereign, and as such, its acts impugned by petitioner are beyond the control of Congress and the Courts" and ruled that the constitutional article on the amending process "is nothing more than a part of the Constitution thus ordained by the people. Hence, in construing said section, We must read it as if the people had said, 'This Constitution may be amended, but it is our will that the amend-ment must be proposed and submitted to Us for ratification only in the manner herein provided'".[27]

This Court therein stressed that "This must be so, because it is plain to Us that the framers of the Constitution took care that the process of amending the same should not be undertaken with the same ease and facility in changing an ordinary legislation. Constitution making is the most valued power, second to none, of the people in a constitutional democracy such as the one our founding fathers have chosen for this nation, and which we of the succeeding generations generally cherish. And because the Constitution affects the lives, fortunes, future and every other conceivable aspect of the lives of all the people within the country and those subject to its sovereignty, every degree of care is taken in preparing and drafting it. A constitution worthy of the people for which it is intended must not be prepared in haste without adequate deliberation and study. It is obvious that correspondingly, any amendment of the Constitution is of no less importance than the whole Constitution itself, and perforce must be conceived and prepared with as much care and de-liberation;" and that "written constitutions are supposed to be designed so as to last for some time, if not for ages, or for, at least, as long as they can be adopted to the needs and exigencies of the people, hence, they must be insulated against precipitate and hasty actions motivated by more or less passing political moods or fancies. Thus, as a rule, the original constitutions carry with them limitations and conditions, more or less stringent, made so by the people themselves, in regard to the process of their amendment."[28]

9. The convening of the interim National Assembly to exercise the constituent power to propose amendments is the only way to fulfill the express mandate of the Constitution.

As Mr. Justice Fernando emphasized for this Court in *Mutuc vs. Comelec*[29] in the setting aside of a Comelec resolution banning the use of political taped jingles by candidates for Constitutional Convention delegates in the special 1970 elections, "the concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the funda-mental law".

This is but to give meaning to the plain and clear mandate of section 15 of the Transitory Provisions (which allows of no other interpretation) that during the stage of transition the interim National Assembly alone exercises the constituent power to propose amendments, upon special call therefor. This is reinforced by the fact that the cited section does not grant to the interim National Assembly the same power granted to the regular National Assembly of calling a constitutional convention, thus expressing the will of the Conven-tion (and presumably of the people upon ratification) that if ever the need to propose amendments arose during the limited period of transition, the interim National Assembly alone would discharge the task and no constitutional convention could be called for the purpose.

As to the alleged costs involved in convening the interim National Assembly to propose amendments, among them its own abolition, (P24 million annually in salaries alone for its 400 members at P60,000.00 per annum per

member, assuming that its deliberations could last for one year), suffice it to recall this Court's pronouncement in Tolentino (in rejecting a similar argument on the costs of holding a plebiscite separately from the general elections for elective officials) that "it is a matter of public knowledge that bigger amounts have been spent or thrown to waste for many lesser objectives. xxx xxx xxx Surely, the amount of seventeen million pesos or even more is not too much a price to pay for fealty and lo-yalty to the Constitution xxx xxx xxx"[30] and that "while the financial costs of a separate plebiscite may be high, it can never be as much as the dangers involved in disregarding clear mandate of the Constitution, no matter how laudable the objective" and "no consideration of financial costs shall deter Us from adherence to the requirements of the Constitution".[31]

10. The imposition of martial law (and "the problems of rebellion, subversion, secession, recession, inflation and economic crisis - a crisis greater than war")[32] cited by the majority opinion as justifying the concentration of powers in the President, and the recognition now of his exercising the constituent power to propose amendments to the Fundamental Law "as agent for and in behalf of the people"[33] have no constitutional basis.

In the post-war Emergency Powers Cases[33-a], former Chief Justice Ricardo Paras reaffirmed for the Court the principle that "emergency in itself cannot and should not create power. In our democracy the hope and survival of the nation lie in the wisdom and unselfish patriotism of all officials and in their faithful adherence to the Constitution".

The martial law clause of the 1973 Constitution found in Article IX, section 12, as stressed by the writer in his separate opinion in the Referendum Cases,[34] "is a verbatim reproduction of Article VII, section 10 (2) of the 1935 Constitution and provides for the imposition of martial law only 'in case of invasion, insurrection or rebellion, or imminent danger thereof, when the public safety requires it' and hence the use of the 'legislative power' or more accurately 'military power' under martial rule is limited to such necessary measures as will safeguard the Republic and suppress the rebellion (or invasion)".[35]

11. Article XVII, section 3 (2) of the 1973 Constitution which has been held by the majority in the Referendum Cases to be the recognition or warrant for the exercise of legislative power by the President during the period of martial law is but a transitory provision. Together with the martial law clause, they constitute but two provisions which are not to be considered in isolation from the Constitution but as mere integral parts thereof which must be harmonized consistently with the entire Constitution.

As Cooley restated the rule: "effect is to be given, if possible, to the whole instrument, and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.

"This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication. It is scarcely conceivable that a case can arise where a court would be justified in declaring any portion of a written constitution nugatory because of ambiguity. One part may qualify another so as to restrict its operation, or apply it otherwise than the natural construction would require if it stood by itself; but one part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together."[36]

The transcendental constituent power to propose and approve amendments to the Constitution as well as set up the machinery and prescribe the procedure for the ratification of his proposals has been withheld from the President (Prime Minister) as sole repository of the Executive Power, presumably in view of the immense powers already vested in him by the Constitution but just as importantly, because by the very nature of the constituent power,

such amendments proposals have to be prepared, deliberated and matured by a deliberative assembly of representatives such as the interim National Assembly and hence may not be antithetically entrusted to one man.

Former Chief Justice Roberto Concepcion had observed before the election of the 1971 Constitutional Convention that the records of past plebiscites show that the constitutional agency vested with the exercise of the constituent power (Congress or the Constitutional Convention) really determined the amendments to the Constitution since the proposals were invariably ratified by the people,[37] thus: "although the people have the reserved power to ratify or reject the action taken by the Convention, such power is not, in view of the circumstances attending its exercise, as effective as one might otherwise think; that, despite the requisite ratification by the people, the actual contents of our fundamental law will really be determined by the Convention; that, accordingly the people should exercise the greatest possible degree of circumspection in the election of delegates thereto xxx xxx xxx".[38]

12. Martial law concededly does not abrogate the Constitution nor obliterate its constitutional boundaries and allocation of powers among the Executive, Legislative and Judicial Departments.[39]

It has thus been aptly observed that "Martial law is an emergency regime, authorized by and subject to the Constitution. Its basic premise is to preserve and to maintain the Republic against the dangers that threaten it. Such premise imposes constraints and limitations. For the martial law regime fulfills the constitutional purpose only if, by reason of martial law measures, the Republic is preserved. If by reason of such measures the Republic is so transformed that it is changed in its nature and becomes a State other than republican, then martial law is a failure; worse, martial law would have become the enemy of the Republic rather than its defender and preserver."[40]

II. On the question of the Court's jurisdiction to pass upon the constitutionality of the questioned presidential decrees: let it be underscored that the Court has long set at rest the question.

The trail was blazed for the Court since the benchmark case of *Angara vs. Electoral Commission* when Justice Jose P. Laurel echoed U.S. Chief Justice Marshall's "climactic phrase" that "we must never forget that it is a Constitution we are expounding" and declared the Court's "solemn and sacred" constitutional obligation of judicial review and laid down the doctrine that the Philippine Constitution as "a definition of the powers of government" placed upon the judiciary the great burden of "determining the nature, scope and extent of such powers" and stressed that "when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments ... but only asserts the solemn and sacred obligation entrusted 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 the instrument secures and guarantees to them.

At the same time, the Court likewise adhered to the constitutional tenet that political questions, i.e. questions which are intended by the Constitution and relevant laws to be conclusively determined by the "political", i.e. elective, branches of government (namely, the Executive and the Legislative) are outside the Court's jurisdiction.[41]

Thus, in *Gonzales*,[42] (by a unanimous Court) and in *Tolentino*[43] (by the required constitutional majority), the Court has since consistently ruled that when proposing and approving amendments to the Constitution, the members of Congress, acting as a constituent assembly or the members of the Constitutional Convention elected directly for the purpose "do not have the final say on whether or not their acts are within or beyond constitutional limits. Otherwise, they could brush aside and set the same at naught, contrary to the basic tenet that ours is a government of laws, not of men, and to the rigid nature of our Constitution. Such rigidity is stressed by the fact that, the Constitution expressly confers upon the Supreme Court, the power to declare a treaty unconstitutional, despite the eminently political character of treaty-making power".[44]

As amplified by former Chief Justice Concepcion in *Javellana vs. Executive Secretary*[45] (by a majority vote), "when the grant of power is qualified, conditional or subject to limitations, the issue on whether or not the prescribed qualifications or conditions have been met, or the limitations respected, is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions and limitations - particularly those prescribed or imposed by the Constitution - would be set at naught".

The fact that the proposed amendments are to be submitted to the people for ratification by no means makes the question political and non-justiciable, since as stressed even in *Javellana*, the issue of validity of the President's proclamation of ratification of the 1973 Constitution presented a justiciable and non-political question.

Stated otherwise, the question of whether the Legislative acting as a constituent assembly or the Constitutional Convention called for the purpose, in proposing amendments to the people for ratification followed the constitutional procedure and requirements on the amending process is perforce a justiciable question and does not raise a political question of policy or wisdom of the proposed amendments, which if properly submitted, are reserved for the people's decision.

The substantive question presented in the case at bar of whether the President may legally exercise the constituent power vested in the interim National Assembly (which has not been granted to his office) and propose constitutional amendments is preeminently a justiciable issue.

Justice Laurel in *Angara* had duly enjoined that "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".

To follow the easy way out by disclaiming jurisdiction over the issue as a political question would be judicial abdication.

III. On the question of whether there is a sufficient and proper submittal of the proposed amendments to the people: Prescinding from the writer's view of the nullity of the questioned decrees for lack of authority on the President's part to exercise the constituent power, I hold that the doctrine of fair and proper submission first enunciated by a simple majority of six Justices in *Gonzales* and subsequently officially adopted by the required constitutional two-thirds majority of the Court in *Tolentino* is controlling in the case at bar.

1. There cannot be said to be fair and proper submission of the proposed amendments. As ruled by this Court in *Tolentino*, where "the proposed amendment in question is expressly saddled with reservations which naturally impair, in great measure, its very essence as a proposed constitutional amendment" and where "the way the proposal is worded, read together with the reservations tacked to it by the Convention thru Section 3 of the questioned resolution, it is too much of a speculation to assume what exactly the amendment would really amount to in the end. All in all, as already pointed out in our discussion of movants' first ground, if this kind of amendment is allowed, the Philippines will appear before the world to be in the absurd position of being the only country with a constitution containing a provision so ephemeral no one knows until when it will be actually in force", there can be no proper submission.

In *Tolentino* a solitary amendment reducing the voting age to 18 years was struck down by this Court which ruled that "in order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole, "and that there was no proper submission "wherein the people are in the dark as to frame of reference they can base their judgment on".

2. The now Chief Justice and Mr. Justice Makasiar with two other members[46] graphically pointed out in their joint separate opinion that the solitary question "would seem to be uncomplicated and innocuous. But it is one of life's verities that things which appear to be simple may turn out not to be so simple after all".[47]

They further expressed "essential agreement" with Mr. Justice Conrado V. Sanchez' separate opinion in Gonzales "on the minimum requirements that must be met in order that there can be a proper submission to the people of a proposed constitutional amendment" which reads thus:

"xxx xxx xxx we take the view that the words 'submitted to the people for their ratification', if construed in the light of the nature of the Constitution ? a fundamental charter that is legislation direct from the people, an expression of their sovereign will - is that it can only be amended by the people expressing themselves according to the procedure ordained by the Constitution. Therefore, amendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word 'submitted' can only mean that the government, within its maximum capabilities, should strain every effort to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects there-of. By this, we are not to be understood as saying that, if one citizen or 100 citizens or 1,000 citi-zens cannot be reached, then there is no submission within the meaning of the word as intended by the framers of the Constitution. What the Constitution in effect directs is that the government, in submitting an amendment for ratification, should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification or re-jection. For, as we have earlier stated, one thing is submission and another is ratification. There must be fair submission, intelligent consent or rejection. If with all these safeguards the people still approve the amendment no matter how preju-dicial it is to them, then so be it. For the people decree their own fate."[48]

Justice Sanchez therein ended the passage with an apt citation that "xxx xxx xxx The great men who builded the structure of our state in this respect had the mental vision of a good Constitution voiced by Judge Cooley, who has said 'A good Constitution should be beyond the reach of temporary excitement and popular caprice or passion. It is needed for stability and steadiness; it must yield to the thought of the people; not to the whim of the people, or the thought evolved in excitement or hot blood, but the sober second thought, which alone, if the government is to be safe, can be allowed efficacy. xxx xxx xxx Changes in government are to be feared unless the benefit is certain. As Montaign says: 'All great mutations shake and disorder a state. Good does not necessarily succeed evil; another evil may succeed and a worse'".[49]

Justice Sanchez thus stated the rule that has been adopted by the Court in Tolentino that there is no proper submission "if the people are not sufficiently informed of the amendments to be voted upon, to conscientiously deliberate thereon, to express their will in a genuine manner, xxx xxx xxx."[50]

3. From the complex and complicated proposed amendments set forth in the challenged decree and the plethora of confused and confusing clarifications reported in the daily newspapers, it is manifest that there is no proper submission of the propos ed amendments.

Nine (9) proposed constitutional amendments were officially proposed and made known as per Presidential Decree No. 1033 dated September 22, 1976 for submittal at the "referendum-plebiscite" called for this coming Saturday, October 16, 1976 wherein the 15-year and under 18-year-olds are enjoined to vote[51] notwithstanding their lack of qualification under Article VI of the Constitution.

Former Senator Arturo Tolentino, an acknowledged parliamentarian of the highest order, was reported by the newspapers last October 3 to have observed that "there is no urgency in approving the proposed amendments to

the Constitution and suggested that the question regarding charter changes be modified instead of asking the people to vote on hurriedly prepared amendments". He further pointed out that "apart from lacking the parliamentary style in the body of the Constitution, they do not indicate what particular provisions are being repealed or amended".[52]

As of this writing, October 11, 1976, the papers today reported his seven-page analysis questioning among others the proposed granting of dual legislative powers to both the President and the Batasang Pambansa and remarking that "This dual legislative authority can give rise to confusion and serious constitutional questions".[53]

Aside from the inadequacy of the limited time given for the people's consideration of the proposed amendments, there can be no proper submission because the proposed amendments are not in proper form and violate the cardinal rule of amendments of written Constitutions that the specific provisions of the Constitution being repealed or amended as well as how the specific provisions as amended would read, should be clearly stated in careful and measured terms. There can be no proper submission because the vagueness and ambiguity of the proposals do not sufficiently inform the people of the amendments for conscientious deliberation and intelligent consent or rejection.

4. While the press and the Solicitor General at the hearing have stated that the principal thrust of the proposals is to substitute the interim National Assembly with an interim Batasang Pambansa, a serious study thereof in detail would lead to the conclusion that the whole context of the 1973 Constitution proper would be affected and grave amendments and modifications thereof would apparently be made, among others, as follows:

Under Amendment No. 1, the qualification age of members of the interim Batasang Pambansa is reduced to 18 years;

Under Amendment No. 2, the treaty-concurring power of the Legislature is withheld from the interim Batasang Pambansa;

Under Amendment No. 3, notwithstanding the convening of the interim Batasang Pambansa within 30 days from the election and selection of the members (for which there is no fixed date) the incumbent President apparently becomes a regular President and Prime Minister (not ad interim);

Under Amendment No. 4, the disqualifications imposed on members of the Cabinet in the Constitution such as the prohibition against the holding of more than one office in the government including government-owned or -controlled corporations would appear to be eliminated, if not prescribed by the President;

Under Amendment No. 5, the President shall continue to exercise legislative powers until martial law is lifted;

Under Amendment No. 6, there is a duality of legislative authority given the President and the interim Batasang Pambansa as well as the regular National Assembly, as pointed out by Senator Tolentino, with the President continuing to exercise legislative powers in case of "grave emergency or a threat or imminence thereof" (without definition of terms) or when said Assemblies "fail or are unable to act adequately on any matter for any reason that in his judgment requires immediate action", thus radically affecting provisions of the Constitution governing the said departments;

Under Amendment No. 7, the barangays and Sanggunians would apparently be constitutionalized, although their functions, powers and composition may be altered by law. Referendums (which are not authorized in the present 1973 Constitution) would also be constitutionalized, giving rise to the possibility fraught with grave consequences, as acknowledged at the hearing, that amendments to the Constitution may thereafter be effected by referendum, rather than by the rigid and strict amending process provided presently in Article XVI of the Constitution;

Under Amendment No. 8, there is a general statement in general that the unspecified provisions of the

Constitution "not inconsistent with any of these amendments" shall continue in full force and effect; and

Under Amendment No. 9, the incumbent President is authorized to proclaim the ratification of the amendments by the majority of votes cast.

It has likewise been stressed by the officials concerned that the proposed amendments come in a package and may not be voted upon separately but on an "all or nothing" basis.

5. Whether the people can normally express their will in a genuine manner and with due circumspection on the proposed amendments amidst the constraints of martial law is yet another question. That a period of free debate and discussion has to be declared of itself shows the limitations on free debate and discussion. The facilities for free debate and discussion over the mass media, print and otherwise are wanting. The President himself is reported to have observed the timidity of the media under martial law and to have directed the press to air the views of the opposition.[54]

Indeed, the voice of the studentry as reflected in the editorial of the Philippine Collegian issue of September 23, 1976 comes as a welcome and refreshing model of conscientious deliberation, as our youth analyzes the issues "which will affect generations yet to come" and urges the people to "mull over the pros and cons very carefully", as follows:

"THE REFERENDUM ISSUES

"On October 16, the people may be asked to decide on two important national issues - the creation of a new legislative body and the lifting of martial law.

"On the first issue, it is almost sure that the interim National Assembly will not be convened, primarily because of its membership. Majority of the members of the defunct Congress, who are mandated by the Constitution to become members of the interim National Assembly, have gained so widespread a notoriety that the mere mention of Congress conjures the image of a den of thieves who are out to fool the people most of the time. Among the three branches of government, it was the most discredited. In fact, upon the declaration of martial law, some people were heard to mutter that a 'regime that has finally put an end to such congressional shenanigans could not be all that bad'.

"A substitute legislative body is contemplated to help the President in promulgating laws, and perhaps minimize the issuance of ill-drafted decrees which necessitate constant amendments. But care should be taken that this new legislative body would not become a mere rubber stamp akin to those of other totalitarian countries. It should be given real powers, otherwise we will just have another nebulous creation having the form but lacking the substance. Already the President has expressed the desire that among the powers he would like to have with regard to the proposed legislative body is that of abolishing it in case 'there is a need to do so'. As to what would occasion such a need, only the President himself can determine. This would afford the Chief Executive almost total power over the legislature, for he could always offer the members thereof a carrot and a stick.

"On the matter of lifting martial law, the people have expressed ambivalent attitudes. Some of them, remembering the turmoil that prevailed before the declaration of martial law, have expressed the fear that its lifting might precipitate the revival of the abuses of the past, and provide an occasion for evil elements to resurface with their usual tricks. Others say that it is about time martial law was lifted, since the peace and order situation has already stabilized and the economy seems to have been perked up.

"The regime of martial law has been with us for four years now. No doubt, martial law has initially secured some reforms for the country. The people were quite willing to participate in the new experiment, thrilled by the novelty of it all. After the euphoria, however, the people seem to have gone back to the old ways, with the exception that some of our freedoms were taken away, and an authoritarian regime established.

"We must bear in mind that martial law was envisioned only to cope with an existing national crisis. It was not meant to be availed of for a long period of time, otherwise it would undermine our adherence to a democratic form of government. In the words of the Constitution, martial law shall only be declared in times of 'rebellion, insurrection, invasion, or imminent danger thereof, when the public safety requires it'. Since we no longer suffer from internal disturbances of a gargantuan scale, it is about time we seriously rethink the 'necessity' of prolonging the martial law regime. If we justify the continuance of martial law by economic or other reasons other than the foregoing constitutional grounds, then our faith in the Constitution might be questioned. Even without martial law, the incumbent Chief Executive still holds vast powers under the Constitution. After all, the gains of the New Society can be secured without sacrificing the freedom of our people. If the converse is true, then we might have to conclude that the Filipinos deserve a dictatorial form of government. The referendum results will show whether the people themselves have adopted this sad conclusion.

"The response of the people to the foregoing issues will affect generations yet to come, so they should mull over the pros and cons very carefully."

6. This opinion is written in the same spirit as the President's exhortations on the first anniversary of proclamation of the 1973 Constitution that we "let the Constitution remain firm and stable" so that it may "guide the people", and that we "remain steadfast on the rule of law and the Constitution" as he recalled his rejection of the "exercise (of) power that can be identified merely with a revolutionary government" that makes its own law, thus:

"x x x Whoever he may be and whatever position he may happen to have, whether in government or outside government, it is absolutely necessary now that we look solemnly and perceptively into the Constitution and try to discover for ourselves what our role is in the successful implementation of that Constitution. With this thought, therefore, we can agree on one thing and that is: Let all of us age, let all of us then pass away as a pace in the development of our country, but let the Constitution remain firm and stable and let institutions grow in strength from day to day, from achievement to achievement, and so long as that Constitution stands, whoever may the man in power be, whatever may his purpose be, that Constitution will guide the people and no man, however, powerful he may be, will dare to destroy and wreck the foundation of such a Constitution.

"These are the reasons why I personally, having proclaimed martial law, having been often induced to exercise power that can be identified merely with a revolutionary government, have remained steadfast on the rule of law and the Constitution." [54-a]

IV. A final word on the Court's resolution of October 5, 1976 which in reply to the Comelec query allowed by a vote of 7 to 3 judges of all courts, after office hours, "to accept invitations to act as resource speakers under Section 5 of Presidential Decree No. 991, as amended, as well as to take sides in discussions and debates on the referendum-plebiscite questions under Section 7 of the same Decree." [55]

The writer with Mr. Justice Makasiar and Madame Justice Muñoz Palma had dissented from the majority resolution, with all due respect, on the ground that the non-participation of judges in such public discussions and debates on the referendum-plebiscite questions would preserve the traditional non-involvement of the judiciary in public discussions of controversial issues. This is essential for the maintenance and enhancement of the people's faith and confidence in the judiciary. The questions of the validity of the scheduled referendum-plebiscite and of whether there is proper submission of the proposed amendments were precisely sub-judice by virtue of the cases at bar.

The lifting of the traditional inhibition of judges from public discussion and debate might blemish the image and independence of the judiciary. Aside from the fact that the fixing of a time limit for the acceptance of the courtesy resignations of judges to avoid an indefinite state of insecurity of their tenure in office still pends, litigants and their relatives and friends as well as a good sector of the public would be hesitant to air views contrary to that of

the Judge.

Justices Makasiar and Muñoz Palma who share these views have agreed that we make them of record here, since we understand that the permission given in the resolution is nevertheless addressed to the personal decision and conscience of each judge, and these views may be of some guidance to them.

[1] Article XV, section 1.

[2] Article XVI, section 1, paragraphs (1) and (2).

[3] Article XVII, section 3 (1).

[4] Article XVII, section 15.

[5] P.D. No. 991 dated Sept. 2, 1976, as amended by P.D. No. 1031 dated Sept. 22, 1976 and P.D. No. 1033 dated Sept. 22, 1976 "Stating the questions to be submitted to the people in the referendum-plebiscite on October 16, 1976".

[6] Art. XV, sec. 1, 1935 Constitution (see Art. XVI, secs. 1 and 2, 1973 Constitution).

[7] Resolution on motion for reconsideration in Tolentino vs. Comelec dated Nov. 4, 1971, at page 3.

[8] Idem, at page 4.

[9] Idem, at page 4.

[10] Idem, at page 4.

[11] Marshall, C.J. in Marburg vs. Madison, 1 Cranch 137 (1803).

[12] Cooley's Constitutional Limitations, 8th Ed., Vol. 1, p. 81.

[13] Idem, pp. 87-88.

[14] Javellana vs. Exec. Secretary, 50 SCRA 30 (1973).

[15] Majority opinion at p. 20.

[16] 21 SCRA 774 (1967).

[17] Citing Sec. 1, Art. VI, 1935 Constitution.

[18] See sec. 1, Art. VIII, 1973 Constitution.

[19] Aquino vs. Comelec, 62 SCRA 275 (Jan. 31, 1975); see also Gonzales vs. Comelec, L-40117, Feb. 22, 1975.

[20] Cooley, Constitutional Limitations, 8th Ed., Vol. 1, p. 224.

[21] 63 Phil. 134 (1936).

[22] Supra, fn. 19.

[23] Sunday Express (and Times Journal) issues of August 29, 1976 reported that "(A)s proposed by the sanggunian and barangay national executive committees, the following questions will be submitted in the discussions and referendums:

"1. Do you want martial law to be lifted?

"2. Do you want to call the interim National Assembly?

"3. If not, do you want to call a body with legislative powers?

"4. Do you want such body to have full legislative powers?

"5. If not, do you want such body to have limited legislative powers as may be determined by the President in a presidential decree?

"6. If you want to call a body with certain legislative powers, do you want to grant such body authority to propose amendments to the Constitution to make it conform with the aims of the New Society?

"7. If you want to call the body referred to in questions 4, 5, and 6, do you want the members of such body elected by the people through the barangays in accordance with an election code to be promulgated in a decree by the President?

"The barangay and sanggunian executive committees informed the President that it was 'the thinking of the barangays to undertake the referendum on an informal manner and that they opted to devise their own ballots, tally sheets, and all other necessary forms.'

"They likewise expressed their readiness to undertake the discussions and referendum at 'our own expense'.

"As proposed, and approved by the President, the referendum will be done by secret ballot, except in smaller barangays where the residents can be gathered in one assembly to decide on the issues by roll call vote if desired by residents.

"The canvassing will be done by the barangay referendum committee."

[24] "The other issue to be taken up in the public discussions is the question on whether the interim national assembly should be convened or not.

"This question was asked in two previous referenda - in 1973 and 1975 - and was rejected each time by the people.

"The barangays, however, feel it is time to again ask the people's opinion of this matter." (Phil. Express issue of Aug. 30, 1976).

[25] Art. IX, sec. 1, 1973 Constitution.

[26] Cooley's Constitutional Limitations, 8th Ed. Vol. 2, p. 1349, citing Chief Justice Davis in *Gibson vs. Mason*, 5 Nev. 283, 291 thus: "The maxim which lies at the foundation of our government is that all political power originates with the people. But since the organization of government it cannot be claimed that either the legislative, executive, or judicial powers, either wholly or in part, can be exercised by them. By the institution of government the people surrender the exercise of all these sovereign functions of government to agents chosen by themselves, who at least theoretically represent the supreme will of their constituents. Thus all power possessed by the people themselves is given and centered in their chosen representatives".

[27] See fns. 8-10; note in parentheses supplied.

[28] *Tolentino vs. Comelec*, 41 SCRA 702, 725; emphasis supplied.

[29] 36 SCRA 228, 234 (1970).

[30] Resolution denying motion for reconsideration dated Nov. 4, 1971, at page 13.

[31] *Idem*, at page 16, fn. 6.

[32] Majority opinion, at page 19.

[33] *Idem*, at page 20.

[33-a] *Rodriguez vs. Gella*, 92 Phil. 603 (1953); see also *Araneta vs. Dinglasan*, 84 Phil. 368 (1949).

[34] *Gonzales vs. Comelec*, L-40117, Resolution of Feb. 22, 1975.

[35] *In re Egan* 8 Fed. Cas. 367, holding that "Martial law is neither more nor less than the will of the general in command of the army. It overreaches and supersedes, all civil law by the exercise of military power .." as cited in the Secretary of Justice's outline of a study on the exercise of Legislative Power by the President under Martial Law, dated Dec. 27, 1972, as reported in *Lawyers' Journal*, March 31, 1973 issue, p. 90.

[36] *Cooley's Constitutional Limitations*, 8th Ed., Vol. 1, pp. 128-129.

[37] With the exception of the proposed amendments increasing the membership of the House of Representatives from 120 to 180 and authorizing members of Congress to become Con-Con delegates, which were widely publicized as a result of the court proceedings and decision in *Gonzales vs. Comelec*, 21 SCRA 774.

[38] "Perspectives and Dimensions of Constitutional Reforms" delivered as keynote speech at the National Conference on Constitutional Amendments, July 27, 1970.

[39] Articles VIII, IX and X, 1973 Constitution.

[40] U.P. Professor Perfecto V. Fernandez: *Civil Liberties under Martial Law*.

[41] Louis H. Pollale: *The Constitution and the Supreme Court*, Vol. I, page 191.

[42] *Supra*, fn. 16.

[43] *Supra*, fn. 28.

[44] See Art. VIII, sec. 2, 1935 Constitution; Art. X, sec. 5, 1973 Constitution.

[45] 50 SCRA 30 (1973) and cases cited.

[46] Now retired Justices J. B. L. Reyes and Calixto O. Zaldivar.

[47] 41 SCRA at p. 733.

[48] 21 SCRA at pages 816-817, emphasis copied.

[49] *From Am. Law Review*, 1889, p. 311, citing *Ellingham vs. Dye*, 99 N. E. pp. 4, 15; emphasis copied.

[50] 21 SCRA at p. 817.

[51] *Phil. Daily Express* issue of Oct. 11, 1976 reporting the Comelec's stand that "Young voters, from age 15 to below 18 can vote not only on the question of martial law but also on the question regarding the proposed constitutional amendments".

[52] *Phil. Daily Express* issue of Oct. 3, 1976.

[53] Times-Journal and Phil. Daily Express issues of Oct. 11, 1976.

[54] In the Bulletin Today issue of October 2, 1976, the President is quoted as himself abstaining from the debates: "I am trying to steer clear of the debates because it involves martial law, and it involves, of course, me personally. So the less I say about it, the better, I guess, from my point of view".

[54-a] Pres. Marcos' address on observance of the first anniversary of the 1973 Constitution on Jan. 17, 1974; Phil. Labor Relations Journal, Vol. VII, Jan., 1974, p. 6.

[55] The resolution gave the same permission to court personnel by a 9 to 1 vote with Justice Makaslar and the writer presenting no objection in the case of personnel as classified civil service employees, while Justice Muñoz Palma maintained the same negative.

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