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APERTURA DE LA SESION

Se abre la sesion a las 3 p. m., bajo la presidencia del Presidente, Hon. Claro M. Recto.

EL PRESIDENTE: Lease la lista de Delegados.

MR. CANONNOY: Mr. President, I move that the roll call be dispensed with.

EL PRESIDENTE: Se ha pedido que se dispense la lectura de la lista de Delegados. ¿Hay alguna objecion? (Silencio.) La Mesa no oye ninguna, Se dispensa la lectura de la lista. Hay quorum.

MR. CANONNOY: Mr. President, I move also that reading the minutes be dispensed with.

EL PRESIDENTE: ¿Hay alguna objecion? (Silencio.) La Mesa no oye ninguna. Queda aprobada la mocion.

EL SECRETARIO:

P E T I C I O N

Resolution of the Municipal council of Bani, Pangasinan, advocating nationalization of retail business (P. R. 154).

THE PRESIDENT: To the Committee on Sponsorship.

CABLEGRAM RECEIVED

Murphy, Manila. Washington, November 16, 1934

For Recto: Please accept and convey to the Constitutional Convention my very deep appreciation of their good wishes.

QUEZON

EL PRESIDENTE: Al Archivo. Estan en orden las enmiendas.

EL SECRETARIO:

ENMIENDA LIM

En la pagina 3, linea 2, entre la cifra "1" y la palabra "No." insertese lo siguiente: "No person shall be punished with the penalty of death."

EL PRESIDENTE: ¿Que dice el Comite?

SR. ARANETA: Señor Presidente, propongo que se pase a otra enmienda, ya que el señor Lim esta ausente.

EL PRESIDENTE: Vamos a hacerlo con orden, porque si no habra confusion. ¿Que dice el Comite?

SR. SOTTO (F.): El Comite no acepta la enmienda.

EL PRESIDENTE: Desea alguien hablar a favor de la enmienda?

SR. SAGUIN: Señor Presidente, para un turno en contra de la enmienda.

SR. PERFECTO: Señor Presidente, para un turno en pro.

EL PRESIDENTE: Tiene la palabra el Delegado por Manila.

MANIFESTACION DEL SR. PERFECTO

SR. PERFECTO: Señor Presidente, apoyo la enmienda, porque creo que la pena de muerte esta mal llamada pena. Para que una pena sea tal, desde el punto de vista de la criminología, debe ser algo que no solamente causa sufrimiento al acusado, sino que tambien le de oportunidad de enmendarse, de corregirse. La pena de muerte, muchas veces, no causa sufrimiento; antes bien, muchas veces, es una oportunidad para terminar con todos los sufrimientos. La muerte no corrige.

No he de emplear mas razones para sostener esta enmienda y solo deseo añadir que la pena de muerte viola fundamentalmente todos los principios de una sana criminología.

Por tanto, pido que sea aprobada la enmienda.

EL PRESIDENTE: Tiene la palabra el Delegado por Zamboanga.

DISCURSO DEL SR. SAGUIN

SR. SAGUIN: Señor Presidente, al oponerme a la enmienda, no quiero aducir razones academicas, porque estas son muy conocidas de todos, especialmente de los abogados. Razones practicas son las que me mueven a atacar la enmienda.

Para comenzar, dire que siendo aun estudiante, ya sostenia una opinion contraria a la pena capital. Me horrorizada el que la pena de muerte se impusiera a un acusado. Pero, andando el tiempo, sobre todo al ejercer ya la profesion en mi region, tuve ocasion de ver que se cometian crímenes realmente espeluznantes, crímenes horrendos que a mi juicio, no merecian otra pena mas que la de muerte, la pena capital. Para ciertos criminales empedernidos de Mindanao, por ejemplo, especialmente los criminales de las regiones apartadas, la pena de prision no surte ningun efecto. Yo he conocido a criminales confinados en la colonia penal de San Ramon que consideran la pena de cadena perpetua como una bendicion; es mas, despues de estar alli por varios años, se han adaptado de tal manera a la vida de prision, que inclusive se resisten a salir de ella, por encontrar la vida de alli muy a su gusto. Para esa clase de personas que no encuentran en la pena de prision la correccion necesaria, si llegan a cometer los crímenes horrendos a que me he referido, la pena mas adecuada es la de muerte. La pena capital es un remedio para cortar de alguna manera la criminalidad que existe en cierto sector de nuestro pais.

Por estas consideraciones, apelo al buen juicio de los Caballeros de esta Convencion para que rechacen la enmienda objeto hoy de nuestra consideracion.

SR. ORTIZ (M.): Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. SAGUIN: Si, Señor.

SR. ORTIZ (M.): ¿No cree Su, Señoría que la imposicion de la pena de muerte es una infraccion del quinto mandamiento ?

SR. SAGUIN: Infraccion talmente, no lo es, porque no se mata a la persona por matar, sino que se le aplica la muerte como un castigo. Ademas, prescindamos de esas razones mas o menos sentimentales o academicas. Veamos la realidad de los hechos. Vemos con frecuencia que se cometan crímenes tan horrendos que nuestra conciencia no se siente satisfecha con cualquiera pena que se imponga al reo fuera de la pena capital.

SR. ORTIZ (M.): No es ninguna razon sentimental la que nos mueve: precisamente es una razon practica, fundamental.

SR. SAGUIN: No infringimos el quinto mandamiento con la pena capital.

SR. ORTIZ (M.): El quinto mandamiento prohíbe taxativamente matar, y eso no se puede modificar porque es absoluto.

SR. SAGUIN: Creo haber contestado ya a Su Señoría.

SR. ENRIQUEZ: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar si le place.

SR. SAGUIN: Si, Señor.

SR. ENRIQUEZ: ¿Niega Su Señoría al hombre la capacidad de reformarse?

SR. SAGUIN: Como regla general, no la niego; pero hay casos excepcionales. Cuando se cometen crímenes realmente horribles, la sociedad no se siente satisfecha sino con la imposición de la pena capital. En general, acepto como bueno el principio.

SR. ENRIQUEZ: ¿No sabe Su Señoría que, según nos relata la Sagrada Escritura, ha habido personas que después de haber sido muy malas, sin embargo, en las postrimerías de su existencia se volvieron muy buenas y aun santas? ¿No cree Su Señoría que para tales personas sería injusta la pena de muerte?

SR. SAGUIN: Es posible; pero no vamos a considerar esas posibilidades de reforma. Queremos cortar el mal, y hay que cortarlo de raíz.

SR. ENRIQUEZ: ¿Que dice Su Señoría de la actitud de España que es la primera que ha abolido la pena de muerte, pero que después la volvió a insertar en su Constitución?

SR. SAGUIN: Creo que se vieron en la necesidad de restaurar la pena de muerte, para remediar ciertos casos.

SR. PAREDES: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. SAGUIN: Si, Señor.

SR. PAREDES: ¿Su Señoría cree que la pena debe ser proporcionada al delito cometido?

SR. SAGUIN: Creo que sí.

SR. PAREDES: ¿Que me dice Su Señoría del que ha cometido cuádruple asesinato? ¿Podemos matarle cuatro veces?

SR. SAGUIN: Su Señoría pide un imposible.

SR. PAREDES: ¿Donde está entonces la proporción de la pena que Su Señoría admite que debe haber?

SR. SAGUIN: Yo entiendo que con matarle una vez, hemos llegado a la máxima proporción.

SR. PAREDES: ¿Puede Su Señoría compensar con la vida de una persona la vida de cuatro personas?

SR. SAGUIN: Claro que no; pero, al menos con la imposición de la pena capital al reo queda reivindicada la

sociedad por el crimen horrendo cometido.

SR. PAREDES: ¿Cree Su Señoría que la sociedad se satisface con que se mate al mismo criminal, aunque haya matado a un regimiento?

SR. SAGUIN: Creo que si.

MR. MONTESA: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield if he so desires.

MR. SAGUIN: Willingly.

MR. MONTESA: On imposing the penalty of death, you are taking the life of a person. Are you taking the life by stopping the person who committed the crime, or stopping the crime by taking the life of a person?

MR. SAGUIN: Will the Gentleman please repeat the question?

MR. MONTESA: By the penalty of death, you take the life of a person. In taking the life of a person, are you stopping the life of that person or stopping the crime by taking the life of the person?

SR. SAGUIN: En ese caso, el objeto de la pena que se impone al acusado no es solamente el pago, digamoslo así, del crimen que ha cometido, sino además y precisamente al que sirva de escarmiento para los demás, a fin de evitar que se cometan crímenes de igual naturaleza.

MR. MONTESA: All right, you admit that you take the life because you want to stop the crime. From time immemorial, the penalty of death has been imposed on criminals. Has crime ever been stopped? No.

SR. SAGUIN: Ciertamente que no.

MR. MONTESA: Does the Gentleman believe in the Fifth Commandment?

SR. SAGUIN: ¿Por que no lo voy a creer?

MR. MONTESA: All right, it says not to kill. It does not say kill a person because he has committed a crime. I would like to hear the Gentleman's opinion.

SR. SAGUIN: Bueno; ya he contestado ligeramente a esa misma pregunta que me dirigió hace un momento el Delegado por Surigao. Como dije, al oponerme a esta enmienda, no lo hago por razones académicas. No me he preparado para afrontar estas cuestiones académicas, sino que me baso en razones prácticas, fundadas en la experiencia que he tenido en la región donde ejerzo mi profesión. Allí la criminalidad es horrible; se dan casos de cuádruples y aun quintuples asesinatos con todas las agravantes. Si respiráseis aquel ambiente, os convenceráis de que es necesario que se imponga la pena capital en algunos casos. Como ya dije al principio, cuando aun era estudiante de derecho, me horrorizaba el que a un acusado se le impusiera la pena capital; pero la experiencia amarga, la realidad de los hechos me han hecho cambiar de opinión, y creo que la abolición de la pena capital sería otro factor más para fomentar la criminalidad, cuando menos, para o conseguir su disminución o supresión en aquella región.

MR. BUSLON: I have an amendment similar to that. I would like it to be considered together with the amendment of Mr. Lim.

THE PRESIDENT: The Gentleman may speak in favor of his amendment. ¿Desea el Delegado por Bohol consumir un turno en contra?

SR. BUSLON: Ese es precisamente mi objeto.

SR. LIM: Señor Presidente, quisiera que se me reservara el derecho de ser el ultimo en hablar sobre esta cuestion, y, por lo tanto, cedo al Delegado por Bohol, Señor Buslon, el tiempo necesario para hablar.

SR. NEPOMUCENO (R.): Para un turno en contra.

EL PRESIDENTE: Tiene la palabra el Delegado por Bohol.

DISCURSO DEL SR. BUSLON.

MR. BUSLON: Mr. President and Gentlemen of the Convention: There are several reasons advanced by those who favor capital punishment. One, and probably the most important, is that capital punishment is a deterrent to crime. And another reason is that, if there are so many criminals in prison, the state will not be able to feed all of them, especially in time of national danger when thousands of persons are accused, as is the case in Spain. Now, in Spain, there is a revolution; the jails are filled with prisoners, and the State may not have enough to feed those prisoners.

But I am going to deal first with the belief or theory that capital or death punishment is a deterrent to crime. It is a theory of modern times that a criminal is simply sick. When a person commits a crime, he is simply not using his best judgement. Our Penal Code states that there are crimes which are committed with premeditation, cold-blooded murders. But even in these cases, the criminals may have been impelled by motives beyond their control and hence cannot totally be blamed for the crimes they committed. Statistics show that in other countries, especially in times of national danger, crimes punishable by death have multiplied to a big proportion. Most of the civilized countries of today have already abolished capital punishment, convinced that this kind of punishment is not an effective check to the commission of crimes. And in these countries the tendency to commit crimes formerly punishable by death has not increased in any way. Where capital punishment is not abolished, the penalty is imposed only in certain cases and under certain conditions.

Countries where capital punishment is still retained are those which are not so progressive and not so modern, because capital punishment is a penalty devised by primitive men and barbarians. It is a survival, therefore, of a practice in vogue during barbarous times. Austria, for instance, abolished capital punishment in 1911, providing in its Penal Code that only in times of national danger and under martial law may capital punishment be inflicted. Italy discarded capital punishment in 1889. When Mussolini came into power, capital punishment was adopted again because of attempts against his life, but the Italians definitely abolished it two years ago. We have Rumania, we have Sweden, which abolished capital punishment in 1923; Belgium, in 1863. During the World War many Germans became prisoners of the Belgians, and public sentiment was high against these German prisoners, but the Belgian Parliament did not reenact the death penalty. Denmark has abolished capital punishment since 1891, Finland since 1826. Some of us might think that Germany will be the last nation to abolish capital punishment, but not all the German states are in favor of the pena

MR. VENTURA Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. BUSLON: Willingly.

MR. VENTURA: Is the Gentleman not in favor of imposing the death penalty even with regard to treason or acts derogatory to the Government?

MR. BUSLON: Especially I do not want a man to be put to death simply because he has committed a political offense.

MR. VENTURA: Well, it is high treason — an offense against the life of the Chief Executive, for instance.

MR. BUSLON: Even in that case, Mr. President, I am not in favor of inflicting the death penalty. Since the United States became independent in 1776, only one, as far as I know, has been a traitor to the nation. I do not know, during the World War, how many were classified as traitors to the United States. In any case, it is very easy for the Government to watch out for, to take care of, one or two or even ten traitors without putting them to death. Mr. President, one reason why I do not favor capital punishment under any circumstance is that judges are not infallible. If you put to death a man later found innocent, you will never be able to give back his life.

MR. VENTURA: But that is on the assumption that the man is innocent. When the proof is conclusive that he has committed a capital offense, he should be put to death because that is the only means of protecting the State.

MR. BUSLON: Mr. President, I think the Gentleman from Ilocos Norte is a lawyer like myself, and he has had the experience of cases in court where the evidence was very convincing against the accused; nevertheless, in every such case, the accused is not killed, although he has to be convicted in accordance with the law.

MR. VENTURA: Is it not also true that when a man has killed another man, and the crime is raised from homicide to murder, he should be deprived of his life?

MR. BUSLON: In very rare cases.

MR. VENTURA: Does the Gentleman remember that in all cases of homicide a man may be deprived of his life?

MR. BUSLON: Yes, sir.

MR. VENTURA: And, in rare cases, he can be sentenced to death?

MR. BUSLON: Yes, sir.

MR. VENTURA: The Gentleman proceeded on the assumption that when a man has committed homicide, he will be sentenced to death.

MR. BUSLON: Under our Penal Code, it is only when a man commits murder that he is going to be put to death, and when the decision of the Supreme Court is unanimous.

MR. VENTURA: Unanimous! So there is a sufficient safeguard for the life of the criminal.

MR. BUSLON: I admit that there is a sufficient safeguard for the criminal, but, for the simple reason that man is fallible, I am going to sustain my theory that to free one hundred criminals is better than to kill one.

MR. VENTURA: What penalty would the Gentleman impose on one who had committed high treason? Not the death penalty?

MR. BUSLON: Even in war times, we should not impose the death penalty. If we were at war like Siam, and we had ten traitors, we could easily keep them in Bilibid where they would not last ten or twenty years.

MR. NIERE: Mr. President, will the Gentleman yield ?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. BUSLON: Willingly.

MR. NIERE: Is it not true that one of the primordial duties of the State is to protect life?

MR. BUSLON: Yes, sir.

MR. NIERE: How then can the State protect the lives of the people without imposing: the death penalty on those who kill?

MR. BUSLON: I will answer it. The killer has as much life as the one killed.

MR. NIERE: How can we safeguard the lives of the people without executing the killers?

MR. BUSLON: I said that the criminal has as much life as the one killed, and those who are dead are dead. I also said, in the beginning, that under a modern theory a criminal, no matter what kind of crime he has committed, is simply sick. He may have been impelled to commit the crime under circumstances beyond his control. Now, if life is very dear to the State, then the criminal must be cured, not killed, so that he will become a good citizen.

MR. NIERE: So the Gentleman is with me.

MR. BUSLON: I insist on the theory that a criminal is a sick man.

MR. NIERE: Well, does not the Gentleman believe that in Surgery, when an organ is completely useless, we have to cut it in order to avoid any progress of the disease?

MR. BUSLON: I am not a physician, but I know that a useless organ is usually taken out.

MR. NIERE: I am a physician.

MR. BUSLON: But I do not see any parallel between a useless organ and a criminal. An organ is only a part of the body; we are treating now of a whole body. Government is bound to protect.

THE PRESIDENT: The time of the Gentleman has expired.

SR. CABARROGUIS: Para un turno en contra.

EL PRESIDENTE: Tiene la palabra el Caballero de Marinduque.

DISCURSO DEL SR. NEPOMUCENO

MR. NEPOMUCENO (R.): Mr President and Gentlemen of the Convention: I regret to have to disagree with the distinguished Gentleman who has just preceded me, and to speak against an amendment presented by a Delegate so distinguished as the Gentleman from Manila. But I think there are more reasons than one, each of them important enough to sway this Constitutional Convention, to vote against the proposed amendment. I wish I had studied this question seriously before speaking, but as the copies of the amendment are just being distributed, I will do the best I can to adduce the reasons against approving the amendment.

I agree, Mr. President, to the theory that, as far as practicable, life must be saved, particularly by the State. I agree also to the theory that, as a general rule, criminals in any country are susceptible of regeneration. But it cannot be doubted that there are extreme cases of criminals who can no longer be regenerated. There are crimes so heinous against the State and the lives of the citizens that there can be no other remedy than to impose the death penalty. Moreover, I think it is part of wisdom and public policy to leave the matter to the Legislature. I am against the application of the death penalty in all cases, in all serious cases even, but I am satisfied with the conditions existing at present in the Islands insofar as the application of the death penalty is concerned. A very strong guaranty is accorded to criminals before the death penalty is imposed. It is not enough that the Judge of the Court of First Instance, after hearing all the evidence against the accused, sentences him to death. It is not enough that the case be carried to and argued in the Supreme Court; it is necessary that the decision of the Supreme Court be unanimous. After a conscientious study of the case, when the Supreme Court sentences the accused to death, I think there is sufficient proof, Mr. President, that the man is really guilty and deserved the penalty. Furthermore, the present peaceful conditions of our country may not be permanent. Organized crime, as now existing in the United States and other parts of the civilized world, may be here tomorrow to weaken the very foundation of the Government and imperil the country. It is the duty of the State to protect itself and the citizens by imposing the

death penalty.

Should we adopt the amendment, Mr. President, I am afraid that in case of war the army of the Philippine Government will find itself impeded from imposing the death penalty as a matter of necessity. A foreign spy in the service of an enemy government may bring destruction to our countrymen and that, by reason of the amendment, the Philippine Government will be impotent to protect them. It is not necessary for me to speak at length on this subject. In the United States wholesale murders have been committed by members of certain organizations. Such murders deserve the imposition of the death penalty. We have for example, an outstanding case — the kidnapping of the Lindberg baby. Such a case has not yet happened in the Philippines, but we cannot foretell what will happen in the future. The crime of kidnapping and the commission of murder may become rampant some day in the Philippine Islands and, should we approve the amendment, we shall regret having it adopted by the Convention. For the safety, therefore, of the citizens of the State and for the protection of the State itself, I object to the amendment and request that the same be disapproved.

MR. GRAGEDA: Mr. President, will the Gentleman yield to a question?

THE PRESIDENT: The Gentleman from Marinduque may answer if he so desires.

MR NEPOMUCENO (R.): With pleasure, Mr. President.

MR. GRAGEDA: Mr. President, does not the unanimous decision by the members of the Supreme Court preclude the possibility of an erroneous decision?

MR. NEPOMUCENO (R.): The unanimous decision of the Supreme Court does not absolutely preclude the possibility of a wrong decision.

MR. GRAGEDA: In other words, a man might be convicted, though innocent?

MR. NEPOMUCENO (R.): He might be convicted, though innocent, but that would be a very extreme case.

SR. RAMOS: Para una informacion, Señor Presidente. Segun he oido, Su Señoria admite la posibilidad de que nun requiriendo la opinion unanime de los Magistracies de la Corte Supreme, podria ocurrir el que se condene a uno a la pena capital, no obstante ser inocente.

SR. NEPOMUCENO (R.): Si, Señor. Yo digo que es posible que la decision sea erronea; pero tambien digo que la decision unanime de 9 Magistrados es una garantia muy fuerte contra la comision de un error judicial.

SR. RAMOS: En el caso de que esa posibilidad ocurra, ¿no cree Su Senoria que semejante injusticia ya no tendria reparacion alguna, porque si al reo se le ha condenado a la pena capital y despues se descubre que era inocente, en se caso el dano seria irreparable? Mientras que eliminando la pena capital, si se descubre despues que el condenado es inocente todavia se podria rectificar el error.

SR. NEPOMUCENO (R.): Para contestar al Caballero, yo diria que tengo mas fe en la decision unanime de nueve Magistrados que en la opinion de una sola persona.

SR. RAMOS: Le voy a citar un caso. No se si lo ha oido Su Señoria. En mi provincia, hace mucho tiempo, uno fue condenado a la pena de muerte por haber asesinado a una persona cuyo cadaver se decia que habia sido encontrado en la sementera. Pero al cabo de cierto tiempo. despues de la ejecucion de la pena impuesta al condenado, la persona que se decia habia sido la victima aparecio. ¿No cree Su Señoria que este es un caso que justifica la abolicion de la pena capital?

SR. NEPOMUCENO: (R.): No lo creo; ese es un caso raro, que solo puede ocurrir entre mil o diez mil casos.

SR. RAMOS: Llamese raro o lo que sea, lo cierto es que hay posibilidad de reparar un daño en el caso de que despues de condenado uno se descubra que es inocente, lo que seria imposible si le hubiese condenado a la pena capital y el acta se ejecutase. ¿No cree Su Señoria que esto es lo justo y no el imponer la pena de muerte a uno que luego resulte que es inocente?

SR. NEPOMUCENO (R.): Debemos tener en cuenta que si le ponemos en libertad o en una situacion en que puede estar en libertad algun dia, el criminal, al salir de la carcel, puede destruir mas vidas que las que puede destruir el Estado, y yo siempre sigo aquella teoria de que la salud de la comunidad es la suprema ley.

SR. RAMOS: Entonces para Su Señoria uno que por una circunstancia o por otra comete un asesinato ya es reo para toda su vida?

SR. NEPOMUCENO (R.): No lo he dicho precisamente.

SR. RAMOS: Porque si admitimos la posibilidad de que ese reo puede regenerarse algun dia, ¿por quo vamos a cortarle la vida solamente por una circunstancia y otra?

SR. NEPOMUCENO (R.): Es precisamente para aquellos reos que no tienen ninguna posibilidad de regenerarse.

SR. RAMOS: Y para esos casos, ¿cual seria, por ejemplo, la circunstancia que Su Señoria requiera para que uno pueda considerarse reo que ya no tiene medio de regenerarse?

SR. NEPOMUCENO (R.): Yo aceptaria la decision unanime de la Corte Suprema.

SR. RAMOS: Aun para el case en que el delito cometido es parricidio....

SR. NEPOMUCENO (R.): En el caso, que Su Señoria ha mencionado, ¿podria informarme Su Señoria si ha llegado el asunto a la Corte Suprema y esta confirmo la sentencia del juzgado inferior?

SR. RAMOS: Parece que llego, no estoy seguro, porque entonces no estaba alli, pero la cuestion es que se llego a ejecutar la sentencia y ya no habia remedio de deshacer lo hecho.

SR. NEPOMUCENO (R.): ¿Le he oido a Su Señoria decir que estaba seguro?

SR. RAMOS: Tiene que llegar si es pena de muerte.

SR. NEPOMUCENO (R.): ¿Vive todavia el criminal? La ley requiere que un asunto de esa naturaleza se eleve a la Corte Suprema antes de la ejecucion de la sentencia. Esa es ley desde un principio.

SR. RAMOS: Debio de haberse elevado, porque se ejecuto la sentencia. Era yo aun un chiquillo cuando se ejecuto la sentencia.

SR. NEPOMUCENO (R.): Con igual razon que cita eso Su Señoria, yo podria decirle que hubiese podido no haber unanimidad en la Corte Suprema cuando se dicto la decision, y se hubiera salvado la vida de aquella persona.

SR. RAMOS: La cuestion es que ha ocurrido ese caso en que el error no se pudo remediar si no se hubiese impuesto la pena de muerte, aquel individuo estaria aun viviendo.

SR. NEPOMUCENO (R.): Lo malo es que Su Señoria no sabe de cierto si llego a la Corte Suprema aquel asunto.

SR. RAMOS: Eso no tiene importancia para el caso. La cuestion es que se elevo a la Corte Suprema el asunto.

SR. RAMOS: Eso ocurrio en aquellos tiempos.

SR. NEPOMUCENO (R.): ¿Durante la revolucion?

SR. RAMOS: Despues de la revolucion.

EL PRESIDENTE: El tiempo del orador ya ha expirado.

SR. LIM: Señor presidente, quisiera saber cuantos turnos hay registrados en relacion con este asunto. Si no hay otro mas que quiera hablar, voy a cerrar el debate.

MOCION YSIP RECHAZADA

SR. YSIP: Señor Presidente, pido el consentimiento unanime para que esta cuestion se discuta despues de que hayamos terminado con el "Bill of Rights." Esta es una cuestion muy importante.

EL PRESIDENTE: Se ha pedido que la discusion de este asunto se aplace para despues de terminado el debate sobre el "Bill of Rights."

Los que esten conformes con la mocion. que digan Si. (Varios Delegados: Si.) Los que no lo esten, que digan No. (Varios Delegados: No.) Division. Los que esten conformes se serviran ponerse de pie. (45 Delegados se levantan.) Los que esten en contra, se serviran hacer lo propio. (56 se levantan.)

Por 56 votos negativos contra 46 afirmativos se rechaza la mocion.

MR. CABARROGUIS: I request a chance to speak-against the amendment.

SRI DE GUZMAN (ALEJ.): Señor Presidente, pido que se amplien a cinco los turnos para ambos lados.

EL PRESIDENTE: Se ha pedido que se amplien los tres turnos a cinco por cada lado. Los que esten conformes con que se amplien los turnos a cinco, que digan: Si. (Varios Delegados: Si.) Los que no lo esten que digan No. (Varios Delegados: No.) (Varios Delegados: Division.)

Los que esten a favor de la mocion que tengan la bondad de levantarse. (Cuarenta y siete Delegados se levantan.) Los que no lo esten se serviran tambien levantarse. (Sesenta y siete Delegados se levantan.)

Por 67 votos negativos contra 47 afirmativos se deniega la mocion.

SR. LIM: En vista de eso y queriendo cerrar el debate, cedo el uso de la palabra por ahora al Delegado Cabarroguis.

EL PRESIDENTE: ¿Alguien del Comite de Ponencias va a hacer uso de la palabra?

SR. SOTTO (F.): El Comite de Ponencias pedira a su debido tiempo que se reconceda la palabra para cerrar el debate.

SR. LIM: No habiendo mas que tres turnos por cada lado. si el Comite de Ponencias piensa hablar sobre la cuestion, creo que el Señor Cabarroguis no puede ocupar el "floor."

EL PRESIDENTE: ¿Que dice el Comite de Ponencias?

SR. SOTTO (F.): Perfectamente; si hay tiempo, el Comite de Ponencias va a cerrar el debate.

MR. CABARROGUIS. Mr. President.

THE PRESIDENT. The Gentleman from Nueva Vizcaya has the floor.

DISCURSO DEL SR. CABARROGUIS

MR. CABARROGUIS. Mr. President and Gentlemen of the Convention: Not being an attorney, I am going to speak to you as a mere citizen about the necessity of having capital punishment in the Philippines. A reason has been given by those in favor of the amendment and it is to the effect that it is only biblical that the right to kill

does not belong to anybody. This is absolutely true but I do not see why any one person should kill another. It is necessary, that in the Philippines we impose capital punishment for the following reasons; We as a people are rather, easily irritated — for, a slight mistake of one man we are likely to kill him — and only the presence of capital punishment deters us from killing, knowing that if we take someone's life we may lose our own through court proceedings.

The Bible says, "A tooth for a tooth and a nail for a nail," Yet it also says that no one has the right to kill. In one word the biblical reason is out of place because the Bible contradicts itself. Right now we find that society is becoming more complicated, and it is likely that in the future crimes will multiply in the Philippines. There is no doubt that kidnapping is going to be true in the Philippines as it is true in the United States. The act of kidnapping is one of the most heinous crimes, and I believe that those who are criminally inclined will have no fear if they know that capital punishment will not be imposed on them by the State. With that knowledge, a man is likely to commit a crime, but capital punishment will serve as a strong deterrent.

I have heard that in handing down decisions the courts may condemn innocent persons to the electric chair. This is true, but if the courts commit an error in deciding a case, it is because of the procedural laws. Our procedure should be changed or modified so that the courts may have more means of finding whether a person is guilty or not. As I have said, if a person knows that he will not be electrocuted for committing a very serious crime, he will be encouraged to become a criminal. When I was in Mindanao, I saw that the Moros, finding themselves subject to capital punishment, began to take notice of the penalty. I remember that when Judge Yeager of Jolo imposed capital punishment upon a Moro, the Moros began to be afraid. Since that time, they have become very careful in one way.

The Delegate from Zamboanga has made a very good appeal here, stating that capital punishment is absolutely necessary as a deterrent to the commission of crimes in Mindanao.

MR. BUSLON: Will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. CABARROGUIS: With pleasure.

MR. BUSLON: Is it because of his experience in Mindanao that the Gentleman is now in favor of the retention of capital punishment?

MR. CABARROGUIS: Yes. From experience, I can say that the Moros, since the imposition of capital punishment, have been very careful in committing crimes.

MR. BUSLON: Do I understand that if the Gentleman had not gone to Mindanao, he would not have favored capital punishment now?

MR. CABARROGUIS: I might or might not.

MR. BUSLON: Does the Gentleman want the provision for capital punishment in our Constitution because he wants the Moros to be afraid?

MR. CABARROGUIS: It is not only that. We must stop serious crimes wherever they are bound to happen in this country.

MR. BUSLON: Does not the Gentleman presuppose that if there is no provision for the death penalty embodied in the Constitution, there will be many criminals in this Convention?

MR. CABARROGUIS: I cannot answer that; it all depends upon the future.

MR. GRAGEDA: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. CABARROGUIS: Willingly.

MR. GRAGEDA : The Gentleman admitted that despite the decision of the Supreme Court a man may still be innocent.

MR. CABARROGUIS: It was not a total admission.

MR. GRAGEDA: The Gentleman suggested that other means must be provided for in our laws to assure that a man is guilty before he is put to death.

MR. CABARROGUIS: To give the Government more chances to find out whether a man is guilty or not.

MR. GRAGEDA: Will the State have the means to give more possibilities of getting more evidence?

MR. CABARROGUIS: It is our duty, as well as the duty of the Members of the Legislature in the future, to find such means.

MR. GRAGEDA: Just now, cannot the Gentleman suggest any means?

MR. CABARROGUIS: In the mean time, I cannot, but capital punishment is a deterrent crime.

MR. GRAFILO: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. CABARROGUIS: Willingly.

MR. GRAFILO: Is the Gentleman from Nueva Vizcaya aware of the fact that one of the theories of punishment is reform?

MR. CABARROGUIS: Yes.

MR. GRAFILO: If a man is already dead as a result of capital punishment, reform, which is one of the objectives of punishment, will be eliminated.

MR. CABARROGUIS: I agree with the Gentleman that one objective of punishment is reform, but to reform a man who has committed a heinous crime is too late. I think it is high time society protected itself.

MR. GRAFILO: Does the Gentleman mean to say that those condemned to death are born criminals and that they cannot be reformed?

MR. CABARROGUIS: I do not know.

MR. GRAFILO: What about those culprits who are not born criminals, those who still have chances for reform?

MR. CABARROGUIS: I cannot tell whether or not a man is a born criminal; but once he kills, he is a criminal.

MR. GRAFILO: If we cannot tell that a person is a born criminal, the benefit of the doubt should be given him.

MR. CABARROGUIS: There is no doubt. The fact that he has killed makes him a criminal.

MR. GRAFILO: So when a person kills, he should be killed.

MR. CABARROGUIS: He should be killed, because he has become a danger to society.

MR. GRAFILO: Does not the Gentleman think that it would be advantageous for society if a person, instead of being killed, were placed in some penitentiary and there made to work for something beneficial to the public?

MR. CABARROGUIS: I have found from time to time that prisons are a burden to the Government.

MR. GRAFILO: Is there no procedure by which criminals can be made useful?

MR. CABARROGUIS: They may, in some way be something useful, but I think they should expiate for the crimes they have committed.

THE PRESIDENT: The time of the Gentleman has expired. The Delegate from Manila (Mr. Lim) has the floor.

MR. VENTURA: Before the Gentleman from Manila proceeds, will he explain to this Convention how his amendment will stay in Section I? His amendment is as follows: "No person shall be punished with the penalty of death." It is between No. 1 and the word "no" and then follows Section 1. How will that stand with Section 1?

MR. LIM: It will be a separate paragraph entirely.

DISCURSO DEL DELEGADO LIM

MR. LIM: Mr. President and Gentlemen of the Convention: It is with great concern that I stand before you this evening to sponsor an amendment—a provision originally proposed and presumably forwarded to the corresponding committee, but entirely ignored in the committee report to this august Body. The amendment reads as follows: "No person shall be punished with the penalty of death."

"The importance of the subject compels me over and above factional opinions and divisions, to earnestly insist on its adoption, with the hope of securing the assistance and approval of this Convention.

An essential part of criminal law is the punishment or sanction by which the State seeks to prevent or avenge an offense. But great changes have been made throughout the world in the modes of punishing crime, the modern trend being for sociological penology.

I have used the phrase "penalty of death" instead of "capital punishment" as it is universally known, in order to distinguish its true nature from the meaning that capital punishment had under the Roman law, according to which the term means the confiscation of all property and deprivation of all honors, aside from the taking of life or "summum pupplicium" the specific names given to the latter.

It is not my intention to suppress the word "life" in the next provision, inasmuch as such an inhibition against the deprivation of life extends to the right of an individual to his body in its completeness and the use of the God-given faculties which make life enjoyable.

It is my aim to prove briefly ten different propositions showing the futility and immorality of capital punishment as the penalty for any crime. They are as follows:

1. The advance of civilization and constant evolution of doctrines of democracy tend to the abolition of the penalty;
2. The penalty lowers the general appreciation of life;
3. It makes the victims into heroes and martyrs;
4. It has a bad effect in the institution in which the penalty is inflicted;
5. It is inconsistent with the general policy that it is being developed for the treatment of offenders;
6. It concentrates emotions on the evil already done rather than on the removal of the conditions which produced that evil;

7. The State has no right to inflict the penalty, nor is justified under the conditions prescribed in our laws;
8. It is social cowardice to maintain the punishment in our law books;
9. It serves no practical purpose and;
10. The penalty is irreparable in case of error.

Historical considerations prove that capital punishment prevail mostly where internal conflicts develop or where a military power or another group has gained control of another or where there are marked differences in political loyalty or in religious beliefs, in periods of of great disorganization. It also flourishes when the leaders have been isolated from the rank and file of the population by the caste system.

The use of capital punishment is determined generally not by the material culture of any group or State but by the social relations among the individuals of the group. Where relations are intimate and the members are essentially of the same culture, they have little recourse to the penalty; when there are artificial barriers between classes and contacts are infrequent and lacking in intimacy, the penalty can be inflicted by said members upon others with little loss of equanimity.

As democracy has spread, however, and human contacts have been facilitated by the development of means of communication, there has been a general tendency for capital punishment to wane. This tendency became apparent in different countries at different times.

The laws of Hammurabi (Babylonia) provide for capital punishment somewhat indiscriminately; even the "lex talionis" of the ancient Hebrews which proclaimed the law "of a life for a life, an eye for an eye, and a tooth for a tooth," later adopted by the Romans, represented an advance in civilization as introducing the idea of degree in the law.

We all know of the Draconian laws of Greece. We all know how men like Socrates were executed merely for opinions which were distasteful to those in authority.

In Rome the penalty of death was for treason, adultery, seduction, murder, corruption and kidnapping (under certain circumstances), abduction and rape.

In Anglo-Saxon times, murder was punishable by a fine two-thirds of which went to the relatives and one-third to the king.

In the 13th century, death was, by the common law of England, provided for all felonies (except mayhem and petty larceny). The penalties were so ferocious that the severity of the law was tempered by a rule as to benefit the clergy and by the rigid adherence of the judges (in *favorem vitae*) to the rules of correct pleading and proof, whereby the slightest error on the part of the prosecution led to an acquittal. The condemned felons were also given the option of transportation (deportation) to the English colonies.

Instead of no less than two hundred capital crimes at the beginning of the 19th century, as shoplifting up to five shillings, counterfeiting internal revenue stamps on perfumery or hair powder, stealing a sheep, cutting down a tree, etc., England has only four: high treason, murder, piracy with tolerance, and destruction of royal dockyards.

Since 1832 the death penalty has been exacted under the ordinary law in England only for murder, and the only different case since then occurred in 1917 when Roger Casement was hanged for high treason.

Although at the time of the colonization of America no less than two hundred crimes, as I have said, were punishable by death, the colonists greatly reduced this number to only twelve in the New England colonies. Since colonial times, there has been a growing distaste for its use, evidenced by somewhat constant reduction in the

number of capital offenses.

In 1892 a federal law was passed which reduced the number of capital crimes to three, namely, treason, murder and rape.

The following countries have abolished the death penalty: Argentina, Austria, Brazil, Colombia, Costa Rica, Ecuador, Holland, Honduras, Italy, Latvia, Luxemburg, Norway, Panama, Peru, Portugal, Rumania, San Marino, Sto. Domingo, Sweden, Switzerland, Uruguay and Venezuela.

In Belgium, it has been practically abandoned; because since 1863 the king has always granted a reprieve.

The States of Michigan, Kansas, Minnesota, North and South Dakota, Tennessee, Rhode Island, Wisconsin, Maine and Washington have abolished it. Of the thirty-seven which have retained it, twelve limit it to murder, while in the thirty-three States, the courts are vested with the discretion to impose the death penalty.

The Penalty Lowers the General Appreciation of life

Capital punishment is an injury to society, and it is one of the cruel inventions of caste, just as some of the laws governing the latter are class laws to protect the property owners or the capitalists. The State teaches people to kill. If a State wishes that its citizens respect human life, then that State should stop killing. If life is sacred enough to be protected from destruction by personal violence, is it not so sacred that we do not make it certain it will not be taken through conspiracy, public prejudice or judicial mistake? Why not go a step further and say that life is so sacred that the State should not take it at all?

Would not public sentiment, cultivated by different doctrines, be more effective than the present attempt to accent the sacredness of life by executing people? The completion of an execution, with the horrors that inseparably accompany it, degrades and brutalizes. This cannot be otherwise, and the State has no right thus to degrade its people unless absolutely indisputable that the result sought cannot be accomplished in any other way. Also, execution renders life less sacred, by inducing the desire for suicide on the part of the criminal, so that every prisoner under sentence of death is guarded with the greatest care, lest he destroys himself and thus show the community another evidence of disregard for life.

Nature loves life. We believe that life should be protected and preserved. The thing that keeps one from killing is the emotion, that he has against it, and the greater the sanctity that the State pays to life, the greater the feeling of sanctity the individual has for life.

It Makes the Victims into Heroes and Martyrs

If the penalty is aimed at criminals, then it is useless, because they do not price life highly. Murderers, as a class, are not to be frightened by such a penalty; they are the bravest of their kind. Many of them, in committing murder, have the courage to risk their own lives. For some persons, the penalty of death even has a certain fascination arising out of vain glory, a characteristic of criminals. Many of them would readily choose the electric chair, with the suggestion of heroism and martyrdom rather than the penitentiary, which has no other meaning for them than disgrace. Danton, standing before the executioner, thundered his defiance for all to hear: "You will show my head to the people; it will be worth the display."

It has Bad Effect in the Institution in
Which the Penalty is Inflicted

If the intention of the State is that of exemplarity, I invite you to witness the effect of the execution of a criminal within the institution where it takes place. A general depression will be noticed among all the inmates. But does the penalty accomplish its purpose? No. The homicides and murders that we have been hearing and reading in the

press furnish the best answer.

It is Inconsistent With the General Policy that it
is Being Developed for the Treatment of
Offenders

Plato said: "Everyone who undergoes punishment, as that punishment be likely inflicted, ought either to be made better thereby and profit by it, or serve as an example to the rest of mankind, that others, seeing the sufferings he endures, may be brought by fear to amendment of life."

Bercaria, the first authority of eminence to combat capital punishment, denies the right of government to take a human life under any circumstance and maintains that the imposition of death is a less efficacious deterrent than the continuous example of a living culprit condemned to repair, by laboring as a slave, the injury he has done to society.

Bentham pointed out that certainty of punishment was more effective than severity, that severe punishment induced juries to acquit criminals, and that thus the certainty of punishment was diminished.

Mostesquieu tells us that it is certainty and not severity which deters—that excessive severity hinders the execution of laws.

The infliction of the death penalty has become so odious even to our own judiciary, whose members have time and again done everything to circumvent the law. About a year ago a prominent judge, presiding over a court in a neighboring province, broke into pieces the pen with which he had to sign the sentence of three murderers, reimbursing the Government for the value of the public property.

If we ought to get rid of killings by electrocution, why not inflict a punishment that is really terrible? Death in the electric chair is not so much. It lasts but a short time. There is no physical torture in it. Why not boil criminals on oil, as has been done before? Why not crucify and quarter them at a cross-roads? Why not burn them at stake? Why not sew them into a bag with serpents and throw them out to sea? Why not break every bone of their bodies on the rack, as has been the punishment for such offenses as heresy and witchcraft?

It Concentrates Emotions on the Evil Already Done Rather Than on the Removal of the Conditions Which Produced that Evil.

The mental state of a criminal, produced oftentimes by heredity, environment and poverty, is so disrupted usually by drugs and alcohol that strong passions, do-minate the mind until the crime is committed.

But such a state of mind is different afterwards when every reason for committing the crime is gone.

Why then remedy the past and not the present?

Better sociological conditions should be emphasized.

The State Has No Right to Inflict the Penalty Nor, is It Justified Under the Conditions Prescribed in Our laws.

The penalty is inflicted upon a certain kind of murderer. In our industrial centers countless persons perish by preventable accidents; but owners and managers who are responsible for this loss of lives are rarely punished in any way.

The despised salonkeeper who kills his customers by the slow process of constant intoxication is not dealt with as a major criminal, nor the reputable distiller or brewer whose extractions are the first cause.

The dispenser of a drug that consumes the will and finally the man is in no danger of the gallows.

And the crime of the procurer which destroys happiness and home and health and soul, resulting in death rendered welcome — is not punished capitally.

As long as the element of chance or uncertainty about threatened death exists, the penalty loses its terrors.

It was not fear of punishment, but the invention of the steamship that broke up piracy.

We often hear these exclamations: "It serves him right!" "Hanging was too good for him!" Such sentiments proclaim the savage. Revenge is the lowest of our characteristics. This standard has been abandoned even by the most violent and drastic penologists.

It is social cowardice to maintain the punishment in our law books.

Why do we send people to prison? Is it because we want to hurt them? No. We send them in self-defense because, for some reason, they cannot adjust themselves to life. No other reason than that is adduced and no humane person believes any other reason is admissible.

In case of murder, we do not inflict the extreme penalty for the crime itself, but for the result. If one discharges a revolver into the breast of another, with the distinct intention of murdering him, but it happens that the victim survives, the punishment is limited to imprisonment. If the man dies, the penalty may be death.

Morally the crime is committed when the gun is discharged and to be consistent, the sacredness of human life and all other arguments used to justify the death penalty, demand that the offender be executed. Yet such is not the law.

We refuse to abolish this penalty for a crime which results in death because we fear our lives may be less secure, as though there were no other remedies.

It Serves No Practical Purpose

Punishment by the State has three objectives: to restore the injured, to reform the criminal, to prevent a repetition of the crime.

In murder it is impossible to restore the injured.

The death penalty prevents the reformation of the criminal, but it does effectively stop repetition.

If, however, repetition can be prevented by imprisonment, electrocution is without an apology.

If we can restrain a homicidal madman, we ought to be able to control an ordinary murderer.

Is it necessary, to prevent additional murderers, to kill?

Can society be more surely protected by treating an offender in such a way as to prevent him from committing future crimes and develop him as far as possible along the lines of good citizenship?

What kind of men go to the chair? Is it true that three out of four are there for their first offense?

Is it true that they are one-crime men, or are they killers who should be put away by the State for the protection of the community? That can be easily determined.

Is it true that a poor man always goes? Is it true that a rich man never goes?

One who has money is able to hire counsel and able to present his case much better. In any event, try and show me someone who had money and went to the chair.

It is Irreparable in Case of Error

Those opposed to the amendment may say that a man must be proven guilty first. Does anybody know whether anybody else is guilty? There is a great deal implied in that. For me to do something or for you to do something is one thing; for some other man to do something is quite another. To know what one deserves requires infinite study. No one can determine the condition of the brain that did the act. It is out of the question.

From the time of Calvary to the present day, innocent men have been put to death.

Mittermaier tells us of guiltless persons executed in Italy, France and Germany. He speaks of a condemned man, afterwards proved innocent, concerning whose case Baron Martin, the trial Judge said:

"The evidence was about the clearest and most direct that, after a long course of experience in the administration of criminal justice, I have ever known."

Chief Baron Keely says that from 1802 to 1840 he traced twenty-two men who were wrongly convicted of murder in England, seven of whom were hanged; Sir James Mackintosh, former Recorder of Bombay, India, a most conservative man, said that in the same country, taking a long period of time, one innocent man was hanged every three years.

I may add that the thousands who were put to death (at stake and otherwise) for witchcraft were not guilty of the crime with which they were charged.

As I have said, there is no way of ascertaining the guilt of anyone accused of murder.

Felonious intent is the essence of a crime. The Judge must then determine the state of mind of the accused. In many cases this is a difficult task, and in a few, the verdict is a mere guess.

A confession of guilt, if voluntary, would seem to be strong evidence, but, by way of illustration, I would invite your attention to the number of cases in which our Supreme Court has repudiated such confessions.

Conclusion

The laws of the Roman kings and the twelve tables of the decemviri were full of cruel punishments; the Persian law, which exempted all citizens from sentence of death, silently abrogated them all; in this period, the Republic flourished; under the emperors severe punishments were revived; and the Empire fell.

I am against capital punishment because I believe that it is inhuman. The hearts of men have softened, have gradually gotten rid of brutal punishment. I believe that it will only be a few years until it is banished forever from every civilized country.

Japan, I understand is about to abolish capital punishment from its domain. Our country pretends to be the most Christian nation in the Far East. Why should we not imitate the example, thus placing ourselves as the vanguard of civilization and democracy on this side of the world?

One who likes to see suffering out of what he thinks is righteous indicating or any other cause will hold fast to capital punishment. One who has sympathy, imagination, kindness and understanding will hate it as he hates a violent death.

Mercy is the most humane and most dignifying of all virtues.

SR. YSIP: Para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. LIM: Si Señor.

SR. YSIP: ¿Podría decirnos Su Señoría si existe otro castigo mas cruel, inequitativo e inicuo que la pena capital?

SR. LIM: La cadena perpetua es lmas cruel para mi que la pena de muerte y podría arredrar al asesino.

SR. YSIP: ¿Quiere decir que no concuerda Su Señoría con la tesis de que la imposición de la pena capital es lmas cruel, es mas inicua que la pena de cadena perpetua?

SR. LIM: Yo la llamaria mas bien injusta, y mas aun, injustificada.

SR. YSIP: Bien, entonces, ¿como compaginaria Su Señoría este artículo del "Bill of Rights," que dice que no se impondrán multas excesivas ni se infligirán castigos crueles e inusitados, si no abolimos la pena capital?

SR. LIM: Si no se aprueba una disposición constitucional expresa aboliendo la pena capital, según la interpretación del Tribunal Federal, la pena de muerte no estará en pugna con la disposición que Su Señoría acaba de leer; así es que es preciso que hagamos una declaración expresa de que la pena de muerte no debe ser impuesta a ningún acusado.

SR. YSIP: Según tengo entendido, la pena capital tiene por objeto proteger a la sociedad contra sus miembros malos. ¿No es eso? Bien; ¿no es asimismo necesario para la protección de la sociedad o de la vida de sus individuos suprimir, por ejemplo a los enfermos de tuberculosis o a los enfermos del mal de Lazaro? ¿No cree su Señoría que estos enfermos ofrecen mayor peligro a la sociedad que un criminal que haya matado a una persona?

SR. LIM: Indudablemente, teniendo en cuenta lo contagiosas que son esas enfermedades. Si hemos de seguir la lógica del Estado, al imponer la pena de muerte, también debemos matar a estos enfermos; pero, según las teorías modernas sostenidas por eminentes penólogos como Ferry y otros, y según la sociología penal moderna, no debe imponerse la pena de muerte.

SR. YSIP: La conclusión que quiero sacar es que no habiendo tenido el Estado necesidad de eliminar de la sociedad a estos enfermos contagiosos, de tuberculosis o del mal de Lazaro, que son un mayor peligro para la sociedad, ¿por que no abolir la pena capital impuesta a personas que son menos peligrosas para la sociedad?

SR. LIM: Agradezco la oportunidad que me ofrece, con los datos que me da Su Señoría para argumentar..

SR. PRESIDENTE: Ha expirado el tiempo del Delegado.

SR. PERFECTO: Antes de que se proceda a la votación de la enmienda del Señor Lim, pido que se lea la enmienda de los Delegados Ortega y otros que aparece en la página 10 y que es de la misma índole, para evitar repeticiones.

EL PRESIDENTE: Léase la enmienda.

EL SECRETARIO: En la página 6-a, después de la línea 2, y de la palabra "inusitados" que se inserte lo siguiente: "tampoco se impondrá la pena de muerte, pues toda pena justa tiene por objeto la enmienda o corrección del culpable,

EL PRESIDENTE: ¿Cuál es la enmienda a la enmienda?

MR. CONFESOR: After the word "death," add the following: "except in case of high treason," so that the amendment will read as follows: "No person shall be punished with the penalty of death, except in cases of high treason."

EL PRESIDENTE: ¿Que dice el autor de la enmienda?

SR. LIM: No aceptamos la enmienda, porque no es un crimen la traición, sino un delito político y habría entonces

menos justificacion para la imposicon de la pena de muerte.

SR. CONFESOR: Por ejemplo, un ciudadano comete una traicion contra la patria ¿no merece ese ciudadano la pena de muerte?

SR. LIM: Hay otra manera de castigar al culpable en ese caso, distinta de la pena de muerte.

SR. CONFESOR: Para mi es la mejor pena.

SR. LIM: Se le podra deportar o desterrar a otro pais como castigo.

SR. CONFESOR: Pero a un ciudadano traidor se le debe quitar la vida inmediatamente.

SR. LIM: ¿Quien podra probar que es traidor?

SR. CONFESOR: Los juzgados.

EL PRESIDENTE: ¿Desea el Caballero de Iloilo arguir a favor de su enmienda a la enmienda?

DISCURSO DEL SR. CONFESOR

MR. CONFESOR: I would like to speak just for five minutes, Mr. President, I agree with the Gentlemen from Manila (Mr. Lim) that the death penalty should be abolished. However, there are cases for which the imposition of the death penalty is necessary. In case of invasion for example, one belonging to the Armed Forces of the Philippines may reveal secrets to the enemy. Well, he does not deserve any consideration. He should be eliminated. If any citizen or employee of the civil government, for example, should facilitate information to any country, and such information should serve to defeat this country at war, do you believe that such a citizen is deserving Filipino citizenship? No. And what should we do with him? We should kill him.

RECHAZAMIENTO DE LA ENMIENDA A LA ENMIENDA

EL PRESIDENTE: ¿Esta dispuesta la Asamblea a votar sobre la enmienda a la enmienda? (Una mayoria: Si.)

Los que esten conformes con ella, que digan Si. (Varios Delegados: Si.) Los que no lo esten, que digan No. (Varios Delegados: No.) Hay una mayoria en contra de la enmienda a la enmienda. Queda rechazada.

DESAPROBACION DE LA ENMIENDA LIM

SR. LIM: Pido que se vote mi enmienda y que la votacion sea nominal.

EL PRESIDENTE: La Mesa desea saber si hay una cuarta parte de los Delegados que apoye la mocion. (Varios Delegados se ponen de pie.) La Mesa decide que no hay una cuarta parte, y por tanto no ha lugar a la peticion.

Se va a votar la enmienda del Delegado Lim. Los que esten conformes con ella, que digan Si. (Varios Delegados: Si.) Los que no lo esten digan No. (Varios Delegados: No.) Hay uua mayoria en contra. Queda desaprobada la enmienda.

Lease otra enmienda.

MR. PEREZ (J.). Before proceeding with the rest of the amendment, I would like to ask the Chair to inform the Convention that the Spanish words for "guarantee" and "due process of law" do not quite express the meanings intended in English. This is very fundamental, Mr. President.

THE PRESIDENT: That is subject to the Commitee on Style.

Lease la segunda enmienda del Delegado Montinola en la pagina 3, linea 4.

EL SECRETARIO:

Pagina 3-A, despues de la palabra "leal" insertense las siguientes: "restrinja las prerrogativas o inmunidades de los ciudadanos Filipinos."

EL PRESIDENTE: Tiene la palabra el Delegado por Iloilo, Señor Montinola.

EL SR. MONTINOLA RETIRA SU ENMIENDA

SR. MONTINOLA: Señor Presidente, en vista de la explicacion que ha dado el Subcomite de Siete, no insisto en esta enmienda, por lo tanto, la retiro.

EL PRESIDENTE: Queda retirada.

Otra enmienda.

EL SECRETARIO: By Delegate Araneta and others :

Page 3, lines 2 to 5, strike out the the whole paragraph after the words "Section 1" and insert in lieu thereof the following paragraphs:

"No person shall be deprived of his life, nor imprisoned, unless in conformity with a reasonable law and by order of a competent court of justice decreed after reasonable procedure and hearing prescribed by law.

"No public officer shall curtail in any way the liberties and rights of an individual, nor deprive him of his property, unless in conformity with reasonable law and procedure.

EL PRESIDENTE: ¿Que dice el Comite?

SR. SOTTO: El Comite no acepta la enmienda.

EL PRESIDENTE: Tiene la palabra el Delegado por Manila, Señor Araneta,

EL SR. ARANETA RAZONA SU ENMIENDA.

SR. ARANETA: Señor Presidente, quisiera hacer constar primeramente que cuando presentamos la enmienda, no lo hicimos presentando estos tres parrafos como una sola enmienda, sino como dos enmiendas; esdecir, proponemos que se entienda como una sola enmienda los dos primeros parrafos y el ultimo parrafo como una enmienda aparte.

La enmienda que yo quisiera someter a vuestra consideracion esta compuesta de dos parrafos, advirtiendole que la palabra "the" debe omitirse. El tercer parrafo no es objeto de esta enmienda.

Señor Presidente, probablemente se acertaria mucho el debate si se me permitiera hacer dos preguntas al Comite de Ponencias en relacion con el significado que dan al "due process of law" que aparece en el proyecto sometido.

EL PRESIDENTE: Tiene la palabra el Presidente del Comite de Ponencias.

SR. SOTTO (F.) El Delegado Laurel es nuestro portavoz sobre esta materia.

SR. ARANETA: Mi pregunta al Comite de Siete es la siguiente : ¿Se puede saber si bajo la frase "due process of law" insertada en el proyecto, queda garantizado el principio enunciado en la Constitucion de Malolos, que dice que ningun filipino podra ser preso sino en virtud de mandamiento de juez competente?"

MR. LAUREL: That is guaranteed in the present draft.

SR. ARANETA: ¿Quiere decir Su Señoría que según el proyecto que tenemos delante, sería anti-constitucional cualquiera ley que trate de regular o prescribir un procedimiento que no sea judicial sobre la imposición de alguna pena?

MR. LAUREL: Mr. President, it will take the time of this Convention if we attempt to explain the meaning of due process of law, because it is a foregone conclusion...

MR. ARANETA: I want to hear the Gentleman's conclusion.

MR. LAUREL: Due process of law, Mr. President, does not necessarily mean judicial proceeding.

SR. ARANETA: De tal modo que queda garantizado el principio que aparece en la Constitución de Malolos, que prohíbe terminantemente el que ningún filipino pueda ser preso sino en virtud de mandamiento de juez competente, de tal modo que retira su primera contestación.

MR. LAUREL: That is guaranteed. As I have said, no person shall be deprived of his life, liberty and property without due process of law, meaning that before a person is sent to jail, the court or tribunal, clothed with the power to hear and determine the matter brought before it, must give him the opportunity to defend himself.

MR. ARANETA: But the Constitution of Malolos says: "Ningún filipino podrá ser preso sino en virtud de mandamiento de juez competente," excluyendo por tanto, las órdenes de tribunales, de comités o de funcionarios públicos que no sean judiciales.

MR. LAUREL: Under our draft, we have a far broader expression for that purpose. I believe that the draft we are producing is much better than the Malolos Constitution, with my due respect to the same.

SR. ARANETA: Creo que no ha contestado a mi pregunta. Mi pregunta se limita a lo siguiente: Bajo la Constitución de Malolos será anticonstitucional, nulo, el que la Legislatura trate de imponer un procedimiento en virtud del cual se puede enviar a la cárcel a una persona, a menos que sea previo mandamiento de juez competente. Ahora bien, pregunto yo; Sucedería lo mismo bajo el proyecto que tenemos en discusión, es decir, sería anticonstitucional alguna ley que establezca un procedimiento en virtud del cual se pueda enviar a la cárcel a una persona o condenarla por un delito, no siendo en virtud de un proceso judicial? Lo único que deseo y pido es una contestación categórica, sí o no.

MR. LAUREL: Not necessarily, because there is, for instance, the contempt of the Legislature. If a person is guilty of that contempt, the Legislature may, in the interest of self-preservation, exercise that right, and the order of the Legislature in that case is the exercise of due process of law, without resorting to a competent judicial authority. This same power we have provided for in the draft.

SR. ARANETA: Agradezco la información.

MR. LAUREL: There are many exceptions, and as I have said, I wish we had ample time to explain the meaning of due process of law. Right now, in the administrative investigation conducted by the Bureau of Customs, we are depriving many people of their right to enter; they are detained at the Farola. And it has been held, time and again, that the administrative investigation conducted by the Bureau of Customs is in compliance with what is called due process of law. The term does not refer to the judicial proceedings; it refers to any form of proceeding prescribed by law, so that a person may not be deprived of an opportunity to be heard and a chance to defend himself.

SR. ARANETA: La última excepción que ha mencionado el Compañero no se refiere precisamente a la cuestión

que he suscitado, porque esta hace unicamente referencia a casos en que se trata de enviar a la carcel a una persona, o sea, usando de las palabras de la Constitucion de Malolos, "ningun" filipino podra ser preso sino en virtud de mandamiento de juez competente. Es toda la informacion que yo queria. Si la Mesa me permite, voy a razonar la enmienda.

Un million de gracias, Señor Delegado por Batangas.

Señor Presidente: Ustedes creeran que soy un presumido al tratar de querer enmendar la definicion de la frase "due process of law," "debido proceso de ley." No tengo el proposito de consumir el tiempo de esta Convencion ni de imponer mis ideas a este Honorable Cuerpo. Lo que quiero unicamente, si es posible, es dilucidar el significado, el alcance de estas palabras "debido proceso de ley". En primer lugar, convengo con el Compañero, Señor Laurel, en que la frase "debido proceso de ley" es muy amplia, es muy elastica. No la critico por ser amplia ni por elastica. Soy el primero en comprender que la Constitucion no es un codigo: la Constitucion debe fijar normas fundamentales; pero disiento del Compañero al decir que la frase "debido proceso de ley" tiene un significado bien conocido y que no se presta a dudas ni a confusiones. Creo, con toda sinceridad, que ha llegado el momento de que esta Convencion, despues de un estudio sereno de la historia de esta frase "debido proceso de ley", trate de darle una nueva articulacion, de tal modo que pueda ser comprendida no solamente por los abogados, por los Miembros de esta Constituyente sino hasta por el pueblo, en general. Preguntad al pueblo que significa la frase "debido proceso de ley," y veriamos que contestacion daria el pueblo a esa pregunta.

Señores, se ha dicho que una de las condiciones mas importantes que debe reunir una Constitucion es su claridad. Una Constitucion debe ser clara; si hay una disposicion si hay un articulo que debe reunir este requisito es el articulo que se refiere a los derechos inalienables del ciudadano. Asi es que invito a esta Constituyente a que redacte los articulos referentes a los derechos inalienables del individuo en una forma liana y sencilla que cualquier graduado de "high school" pueda comprenderlos.

La enmienda que he propuesto no es final, no es definitiva; la podeis mejorar. Estoy seguro de que con la discusion que hagamos en esta Asamblea, podreis sugerir algunas enmiendas para su mayor claridad. Yo la he sometido con el unico objeto de suscitar una discusion.

Vosotros notareis que la enmienda que proponemos se compone de dos parrafos: el primero, debido proceso de ley con respecto a la vida o libertad fisica o propiedad. Para ser mas claro, trato de definir en que forma el Gobierno puede privar al ciudadano de la vida, de la libertad o de la propiedad, y enviarle a la carcel; el segundo parrafo trata....

SR. KAPUNAN: Para algunas preguntas al orador, Señor Presidente.

EL PRESIDENTE: Puede contestar el orador, si lo desea.

SR. ARANETA: Si el Compañero me permite, prefiero terminar antes mi discurso y despues le contestare.

(Prosiguiendo.) Empece preguntando al distinguido Delegado por Batangas (Sr. Laurel) si bajo el proyecto que tenemos en discusion se puede enviar a la carcel a una persona, y el Señor Laurel me contesto que puede enviarse y cito como excepcion el caso de desacato ante un comite de la Legislatura o a la Legislatura. Le pregunte si habia otra excepcion y cito el caso de inmigracion. El caso de inmigracion no creo que respondia a la pregunta, por cuanto que yo preguntaba que otra excepcion existe para poder enviar a una persona a la carcel. No detenerle al entrar aqui en Filipinas, sino enviarle a la carcel por desacato sin mandamiento judicial competente. Pues bien, esto es lo que quicro suscitar para saber el alcance de la frase. Al menos con esta discusion ya adelantamos algo. Ya sabemos que en el proyecto en cuestion, segun la frase "debido proceso de ley" no seria anticonstitucional el que un comite de la Legislatura condene a una persona y le envíe a la carcel. No trato de imponer mis puntos de

vista personales; quiero solamente aclarar cuestiones para mifundamentales. ¿Que cree la Asamblea sobre esta cuestion? ¿Cree la Asamblea que es prudente, que es convenience que la Legislatura pueda enviar a la carcel a una persona bajo la excusa de que ha desacatado las altas prerogativas de la Letrislatura? No tratare de contestar a esta pregunta. No hago mas que suscitar la cuestion.

En mi humilde opinion, no creo que cometeriamos un error si dieramos a la vida y la libertad fisica la mayor proteccion posible, y si nos inspiramos en la Constitucion de Malolos y adoptamos el principio establecido en ella de que ningun filipino, ninguna persona podra ser presa sino en virtud de un mandamiento judicial competente. Compañeros, he estudiado detenidamente el alcance de esta fras. El distinguido Delegado, Señor Laurel, ha dicho que nada nuevo hay bajo el sol; esto es cierto. No trato de decir que he descubierto algo nuevo: nada de eso. Aqui el Delegado Señor Laurel no dijo que la Declaracion de Derechos que aparece en la Constitucion Americana no ha enunciado un principio nuevo y que no es mas que una copia de la Declaracion de Derechos inglesa contenida en el "Bill of Rights." Es cierto eso, pero, Señores, diganme ustedes si no es cierto que la Constitucion americana, al tratar de definir la frase "due process of law", no se dejo guiar por la antigua Constitucion inglesa, sino que la mejoro.

Esta es la frase que conservaban los ingleses desde hacia muchos años. Corren los años y es necesaria una Constitucion federal y que hace America? ¿Copiar, acaso, el precepto constitucional ingles? No, Señor. Trato de mejorarlo, como en efecto lo mejoro, como mas o menos ustedes saben. Ese efecto, es lo que dicen los americanos que trataron de mejorar la fraseologia inglesa. ¿Y que interpretation han tenido estas palabras contenidas en la Constitucion americana? Ustedes se sorprendieran, si les digo que los tribunales, durante el transcurso de estos años, han dado interpretaciones contrarias. La primera dada por los tribunales es sencillamente lo siguiente: "Ninguna persona sera privada de su libertad y de su propiedad, a menos que sea de conformidad con la ley." La ley podra ser arbitraria, tanto en su orden procesal como en su orden sustantivo. Y los tribunales no pueden dar ningun remedio. La ley es suprema y los tribunales no se inmiscuyen en determinar si esa ley es arbitraria o irrazonable. Tengo decisiones de tribunales sobre este particular. Mas tarde se interpretaron esas palabras "debido proceso de ley," en el sentirio de que quieren decir un procedimiento de conformidad con el "common law," es decir, que no se podria privar a una persona de su vida, de su libertad y de su propiedad, a menos que fuese con el procedimiento conocido en el "common law." Otras personas ensanchan esa interpretacion y dicen que es el procedimiento en que descansa la Constitucion; de ahi que otros tribunales aun la ansanchan mas y dicen que es el procedimiento razonable. Los tribunales, siguiendo lo que el Señor Laurel ha sostenido sobre el "judicial statemanship," en uso de esa prerrogativa, inclusive dan a esas palabras una interpretacion mas amplia. ¿Y cual es esa interpretacion mas amplia? Pues, la ley razonable, tanto en su orden sustantivo como en su orden procesal. Hoy dia creo que la frase "debido proceso de ley" esta conforme con lo razonable, tanto en su orden sustantivo como en su orden procesal. No os voy a traer citas, solamente citare algunas autoridades y les que antes de que los tribunales francamente dijeran que la frase "debido proceso de ley" queria hacer decir ley razonable, hubo grandes majistrados de la Corte Suprema Federal que se atrevieron a declarar anticonstitutionales varies leyes, sobre el fundamento de que 48 de esas leyes eran contrarias a los derechos inalienables de ciudadano. Despues, se dio a las palabras "due process of law" esta interpretacion; ley razonable tanto en su orden procesal como en su orden sustantivo.

Esto parece que causa sorpresa. Pero, ¿seria possible que dieramos a los tribunales esa facultad de determinar si una ley es razonable o no? Vamos a ver que dije nuestro Tribunal Supremo. Nuestro Tribunal Supremo hablando por boca del Magistrado Johnson hace muchos anos, en el asunto de U.S. vs. Ling Su Fan, definio las palabras "due process of law". Es igual al "law of the land," y esto es sencillamente "begging the question. Dice:

"Due process of law" is process or proceedings according to the law of the land. "Due process of law" is not that the law shall be according to the wishes of all the inhabitants of the state, but simply—

"First. That there shall be a law prescribed in harmony with the general powers of the legislative department of the Government;

"Second. That this law shall be reasonable in its operation;

"Third. That it shall be enforced according to the regular methods of procedure prescribed; and

"Fourth. That it shall be applicable alike to all the citizens of the state or to all of a class."

Esto, por un lado; por otro, en cuanto al procedimiento razonable, ¿cual es un procedimiento razonable? Desde luego que es distinto, si se trata de la vida y de la libertad fisica, y distinto si se trata de la propiedad y de los otros derechos. De aqui he creido necesario o conveniente sugerir que esta disposicion sea redactada de nuevo en dos parrafos. El primer parrafo, trata de definir lo que es un procedimiento razonable, en relacion con la vida y la libertad fisica, y el segundo parrafo hace referencia a todos los derechos en general, incluyendo los derechos anejos a la propiedad. Y ahora me permitan ustedes que lea la enmienda, que dice asi: "Ninguna persona sera privada de su vida ni reducida a prision." Con esto, no quiero referirme al caso de inmigracion suscitado por el Dr. Laurel, porque no creo que se quiera decir que el inmigrante que esta dentro de la Farola esta en presidio; pero si me refiero a la primera acepcion citada por el Dr. Laurel, al decir que un comite legislativo puede enviar a la carcel a una persona. Yo me opongo a eso. Ninguna persona sera privada de su vida ni reducida a prision sino de conformidad con una ley razonable. Y ahora viene la parte procesal, "y por orden de un tribunal competente"; es decir, debe haber un mandamiento judicial; no debe dictarla un funcionario administrativo ni legislativo; debe haber un mandamiento judicial, decretado despues de una vista prescrita por la ley. Algunos se quejan de que se repita la palabra "razonable." He insistido en la fraseologia, tal como esta. Tal vez se pueda buscar la forma de evitar esa repeticion de la palabra "razonable"; pero esa es la idea: Que la ley ha de ser razonable en el orden sustantivo y en el orden procesal. Para que sea razonable en el orden procesal, la orden debera ser dictada por un tribunal competente. Aun mas; dire que hay otras excepciones. ¿Por que insisto en que debe haber un mandamiento judicial para que se pueda enviar a la carcel a una persona? Porque existen decisiones del Tribunal Supremo Federal que ha declarado valida y constitucional una ley que prescribe un procedimiento en virtud del cual se puede enviar a una persona a la carcel sin necesidad de un mandamiento del juez o tribunal competente. Se trata de una ley en virtud de la cual un funcionario que maneja fondos publicos puede ser administrativamente declarado culpable del delito de malversacion, condenado a presidio y administrativamente podrian sus bienes ser embargados. El Tribunal Supremo Federal declaro constitucional esta ley, porque dice que era ese un procedimiento conocido en America cuando se aprobo la Constitucion. Ese es el caso de *Murray vs. Jacob Ben*, 18-222. ¿Esta la Asamblea Constituyente dispuesta a aprobar ese procedimiento: el que un funcionario publico que maneja fondos pueda ser criminalmente declarado culpable por malversacion por un funcionario administrativo y pueda ser enviado a la carcel? Si no estais conformes con ese procedimiento, hay necesidad de enmendar la definicion del "due process of law," segun mi humilde entender.

Pasando ahora al segundo parrafo, me limito a decir lo siguiente: ningun funcionario publico mermara en modo alguno las libertades y derechos de una persona, ni la privara de su propiedad sino de conformidad con una ley y un procedimiento razonable; es decir, la ley ha de ser razonable tanto en su orden procesal como en su orden sustantivo, y aqui ya no se exige taxativamente que sea necesaria una orden de juez competente.

Señores, ustedes se sorprenderan si les digo que en un asunto el Tribunal Supremo de los Estados Unidos dijo lo siguiente: "Siempre que se trate de la vida, de la libertad la propiedad debe haber, en todo caso, procedimiento judicial." ¿En que quedamos? El Señor Laurel ha dicho que no es necesario esto, mientras que el Tribunal Supremo de los Estados Unidos dice que es necesario. Por eso digo que hace falta una redefinicion. Creo que ha llegado la hora de redefinir. Voy a continuar leyendo: "Requisito este que supone o implica una acusacion por escrito, vista en un tribunal competente, una oportunidad de defenderse y una condena o sentencia antes de que se

pueda imponer castigo alguno, a alguien privando de su vida, de su libertad o de sus bienes."

Segun estas palabras del Tribunal Supremo, no se puede privar a una persona de su propiedad sin una orden de un tribunal competente, y eso es un absurdo. Sabemos que a diario, el Colector de Rentas Internas esta imponiendo multas administrativas sin ninguna orden de juez competente. Cito esto, no para criticar al Tribunal Supremo, sino nada mas que para demostrar que es tal el cumulo de confusion en esta jurisdiccion sobre el particular, debido a que el mismo Tribunal Supremo ha estado dando a estas palabras distintas interpretaciones en diferentes epocas, y es necesario que esta Convencion lo estudie con seriedad, sin el menor deseo de enmendar la plana a los Estados Unidos, sino con el unico proposito de redefinir esto. ¿Seria mal mirado o criticado en America, si adoptasemos esta actitud? Creo que no. Señores, ustedes saben muy bien que actualmente un grupo de eminentes juristas americanos esta tratando de redefinir la ley, y ya han publicado un "Restatement of the law of contract." ¿Y por que? ¿Por que se han entregado a realizar este trabajo tan improbo?

Es tal la confusion que reina en la jurisprudencia americana, que los mismos americanos se han asustado de su obra, y quieren encauzarla por un sistema mas claro, logico y sencillo. Es todo.

EL PRESIDENTE: La Mesa advierte al orador que ya no le quedan mas que quince minutos.

SR. OZAMIS: Para algunas preguntas al orador.

EL PRERIDENTE: El orador puede contestar si le place.

SR. ARANETA: Si, Señor.

SR. OZAMIS: ¿Le bastaria a Su Señoria con que una ley fuera razonable, con tal que estuviera esa ley de conformidad con la Constitucion?

SR. ARANETA: Bien. La Constitucion no fija mas que principios generales. Tanto es asi que el Tribunal Supremo el America se vio en la necesidad de declarar anticonstitucionales algunas leyes que iio infringian ninguna disposicion de la Constitucion. Despues de decir que eran anticonstitucionales dijeron que eran contrarias a la ley natural. Mas tarde, dijeron que no era necesario ajustarse a una disposicion de la Constitucion. ¿Y que hicieron? Dieron a las palabras "debido proceso de ley" un sentido amplio, diciendo que esas palabras quieren decir, ley razonable, tanto en su orden procesal como en su orden sustantivo. Si ustedes quieren ponerlo en un lenguaje mas restringido, se podria decir: una ley que no sea arbitraria, tanto en su sustancia como en su aplicacion. Si he usado la palabra razonable, ha sido por ser esa la palabra empleada por el Tribunal Supremo de los Estados Unidos.

SR. OZAMIS: ¿No seria muy peligroso dejar a los tribunales el determinar si una ley es razonable? Un tribunal podria opinar que una ley es razonable aunque estuviera en pugna con algun precepto constitucional.

SR. ARANETA: No vengo a discutir, Lo que he hecho es unicamente tratar de insertar en la fraseologia. del proyecto la interpretacion adoptada ultimamente por los tribunales de America. Ahora bien, si esa interpretacion que ha sido adoptada por America es mala o buena, discutamoslo. Precisamente por eso suscito esta cuestion, porque quiero que haya una definicion clara de la voluntad de esta Convencion sobre este asunto tan fundamental. Yo no vengo aqui a defender la actitud del Tribunal Supremo de los Estados Unidos. Quiero decir solamente que esa es la actitud de America, y que si aprobamos el proyecto tal como se nos recomienda por el Comite, sera el significado que tendra, y no quisiera que esta Convencion firme como en un barbecho este documento y diga despues "Hombre, esa no era mi intencion."

SR. OZAMIS: Pero hasta ahora, por lo menos, las palabras "el debido proceso de ley" se han aplicado a leyes que

se han considerado estar dentro de la Constitucion, de manera que no podria ponerse a una persona en prision ni embargar sus propiedades mediante una ley que se declare inconstitucional.

SR. ARANETA: Las famosas disidencias del Magistrado Holmes basan en eso, pues mientras sus compañeros declaraban irrazonables las leyes del Congress y las declaraban anticonstitucionales el Magistrado Holmes disienta y decia que el Tribunal Supremo de los Estados Unidos no tenia derecho de declarar irrazonable una ley presentada y aprobada por el Poder Legislativo de los Estados Unidos. En eso consisten precisamente las famosas disidencias del Magistrado Holmes, y veo que Su Señoria es un discipulo del Magistrado Holmes.

SR. OZAMIS: Si no he entendido mal su discurso, parece que Su Señoria aboga por que solamente los tribunales de justicia sean los que puedan privar a las personas de su libertad, de sus bienes o sus derechos.

SR. ARANETA: No, no, al contrario Precisamente por eso, en la nueva redaccion de este precepto he incluido dos parrafos o dos sentencias. La primera hace referencia unicamente a la vida o libertad fisica, o sea, la prision. Para enviar a una persona a la carcel es necesario un procedimiento judicial. En los demas casos no hay necesidad de una orden judicial para privar a una persona de su propiedad.

SR. OZAMIS: Entonces, ¿a que ha venido el ejemplo puesto por Su Señoria del Colector de Rentas Internas que impone multas? ¿Como una critica a este procedimiento cuando puede quitarse a un individuo parte; de su propiedad sin proceso judicial?

SR. ARANETA: Aquello lo dije despues de haber leído una parte de la sentencia del Tribunal Supremo de Filipinas que dice lo siguiente: "Siempre que se trate de la vida, de la libertad o propiedad, debe haber, en todo caso procedimiento judicial," y despues dije que el Colector de Rentas Internas diariamente esta imponiendo multas administrativas, demostrando con ello que aun la misma Corte Suprema ha definido las palabras "debido proceso de ley" en esa forma erronea.

SR. OZAMIS: ¿No es verdad que «sas multas administrativas impuestas por el Colector de Rentas Internas se imponen unicamente con el consentimiento del individuo, pues si no se aviene a transigir el individuo el asunto se lleva a los Tribunales?

SR. OZAMIS: Pero el individuo que se resiste podria llevar el asunto al Juzgado, y este puede pasar por encima de la decision del Colector.

SR. ARANETA: El Colector de Rentas Internas puede embargar la propiedad sin intervenciori judicial.

SR. OZAMIS: Eso si no insiste.

SR. ARANETA: Si insiste seria responsable por resistencia a la autoridad.

SR. OZAMIS: Es mas, se podria cuestionar esa accion del Colector de Rentas Internas para ver si es razonable y constitucional dicha accion.

SR. ARANETA: Creo que no es asi.

SR. OZAMIS: ¿No se podria cuestionar eso en los juzgados ?

SR. ARANETA: Pero de hecho, el Colector de Rentas Internas lo impone a uno la multa administratlva y le quita a uno su propiedad, y si uno quiere defender su propiedad con un cañon o con un fusil, correria el riesgo de ser condenado por infraccion delCodigo Penal.

SR. OZAMIS: Se podria cuestionar la accion del Colector de Rentas Internas, para determinar si esta o no dentro de la Constitucion actual ese procedimiento. ¿No se podria acaso solicitar un interdicto prohibitorio para que se

declare anticonstitucional esa accion?

SR. ARANETA: No cabe.

SR. OZAMIS: Ya lo creo que si.

EL PRESIDENTE: El tiempo del Delegado por Manila ha expirado. Tiene la palabra el Delegado por Batangas.

DISCURSO DEL SR. LAUREL

MR. LAUREL: Mr. President and Gentlemen of the Convention: Qualified for sentimental reasons, and because of my great admiration for the Delegate from Manila, I have always been inclined to receive his views with a great deal of respect, especially when he made reference to the Constitution of Malolos. But I submit to your consideration that the amendment proposed by him is entirely unacceptable. I want to say that the question of reasonableness is not for the counts to determine. The question of justice, of expediency, of wisdom, of advisability of legislation — in other words, the question of reasonableness is primarily legislative. It is not a question for the courts to determine, I repeat, and if the courts, constituting an independent department of the Government, set a law aside, they do so not because primarily the law is unreasonable, but because they find it repugnant to the fundamental law, the supremacy and majesty of which the courts shall, as its sworn duty, uphold.

SR. ARANETA: ¿Puedo hacer interrupcion al Delegado? No he dicho eso. Al contrario, he dicho que bajo la ley organica actual se puede hacer eso ahora y no es necesario un procedimiento judicial. Lo que he hecho es acotar la decision del Tribunal Supremo en donde dice que no se puede hacer eso sin proceso judicial.

SR. ORENSE: Para unas prguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. LAUREL: Si Señor.

SR. ORENSE: Dando por supuesta la suppression de la palabra “reasonable,” ¿no cree Vuestra Señoría que actualmente, en la vida practica, las palabras “due process of law” nos tienen divididos a todos los abogados, y en cada caso se sostienen diferentes teorías, en vista precisamente de la generalidad y amplitud con que se anuncia la frase?

SR LAUREL: Es verdad, Señor Presidente, que no es solamente segun unos autores, sica tambien segiin algunos tribunales de justicia, que la frase "debido preceso legal" es muy amplia y comprensiva de tal modo que los tribunales y los jueces han debatido sobre la naturaleza y la extension de tal frase; pero debemos tener en cuenta que uno de los meritos, no solamente de la Constitucion americana, sino tambien de la Declaracion de Derechos, es que por el uso de frases muy conocidas. se da muy amplio campo a los tribunales de justicia, precisamente para que estos puedan interpretar el sentido y la extension de las palabras empleadas en la Constitucion, y de este modo dar lugar a lo que el Presidente Marshal ha llamado "judicial statemanship". Esta flexibilidad de la Constitucion americana es la razon porque favorezco el empleo de la frase "due process of law" o "debido proceso legal", en la Declaracion de Derechos de nuestro proyecto de Constitucion.

SR. ORENSE: ¿No cree tambien Su Señora que esta Ccnvencion debe procurar, de su parte. insertar en esta ley fundamental frases que no den lugar a muchas discusiones, aunque tal objetivo quizas sea perjudicial a la clase a que pertenecemos?

SR LAUREL: Seria de desear si pudieromos hacerlo. emplear frases que no pudieran dar lugar a ninguna equivocada interpretacion. Pero lo cierto es que hay tantas frases y tantas palabras empleadas en la Constitucion

precisamente para que los tribunales de justicia puedan tener amplitud de accion en la interpretacion de nuestras leyes, a fin de que puedan sus decisiones amoldarse a los cambios de circunstancias y de tiempo y del progreso de la humanidad y esta es la razon de por que eso constituye uno de los meritos de la Constitucion americana. Por ejemplo, tenemos el "police power" a el poder de policia. Los autores y los trihunales de justicia tambien han disertado largamente sobre la naturaleza del poder de policia y aun ahora, como ha dicho el Juez Coolidge, en su tratitdc sobre "Constitutional Limitations", y, sin embargo, nadie niega la existencia del poder de policia. Lo mismo puede decirse con respecto a otros poderes inherentes al Estado y con sagrados por la Constitucion.

SR. ORENSE: ¿No eree Su Señoria que el principal objetivo de esta disposicion, el objeto de la enmier da por parte del Delegado por Manila, es asegurar o garantizar la vida, la propiedad y la libertad?

SR. LAUREL: Creo que la intencion del...

SR. ORENSE: ¿No cree Su Señoria que si este es el objetivo, no quedarian mejor garantizados estos derechos inalienables, como el derecho a la vida y a la libertad, el que ninguna persona pueda ser privada de ellas sino por orden de un tribunal competente y previo juicio?

SR. LAUREL: Es de desear ciertamente que se pudiera aceptar una enmienda haciendo mas precisos los terminos "due process of law." Lo cierto es, sin em bargo, que, en mi humilde opinion, la enmienda propuesta por el Caballero de Manila no da ese efecto; en primer lugar, porque "debido proceso legal" supone necesariamente la aplicacion de una ley razonable, porque una ley irrazonable, una ley injusta no estaria de conformidad, por lo menos, con el espiritu que entranan esos terminos.

SR. ORENSE: Suponiendo que el Delegado por Manila acepta la supresion de la palabra "razonable," porque yo coincido con sus puntos de vista en cuanto a esa frase, ¿podria el Subcomite de Siete admitir esta enmienda?

SR. LAUREL: No se que es lo que piensa dicho Subcomite de Siete sobre esto. Yo, de mi parte, soy de opinion que aun eliminando la palabra "reasonable" no podria aceptarse la enmienda, por las siguientes razones: primera, porque, como ya he dicno, si hemos de sustituir esta frase con otra, dariamos lugar al camhio probablemente de ciertas interpretaciones y habria necesidad de echar abajo decisiones consagradas desde tiempo inmemorial, desde el tiempo de Marshall, y tambien decisiones sentadas por nuestros tribunales de justicia en esta jurisdiccion. Y la segunda razon es porque no estoy muy seguro de que si se introdujese el cambio se mejoraria el sentido o la expresion o siquiera el lenguaje empleado en este proyecto de Constitucion.

SR. ORENSE: Quiero informarle de que antes de implantarse la soberania americana la frase "due process of law" o el debido proceso legal, era una frase completamente desconocida por nosotros y entonces aqui el unico principio mantenido antes y reiterido por el pueblo filipino mediante el Congreso de Malolos era garantizar la vida y la libertad, con la frase sacramental de que "nadie debe ser privado de la vida y de la libertad sino en virtud de una orden dictada por un tribunal competente." Creo que por muchos siglos hemos tenido tambien aqui una administracion de justicia que no tieno nada que envidiar y de la cual formaron parce nuestros mejores jurisconsultos.

EL PRESIDENTE: ¿Esta consumiendo Su Señoria un turno?

SR. ORENSE: Estoy sentando premisas para una pregunta. Y no ha habido jamas discusion sobre la interpretacion que se debe dar a esas palabias, ¿poir que, pues, hemos de dar lugar a que vengan otras interpretaciones cuando dentro de la lexicologia tanto la inglesa como la castellana se pueden encontrar f'rases que eviten distintas interpretaciones y, por lo tanto, discusioines ?

SR. LAUREL: Como ya he dicho, en mi humilae opinion, creo que la frase "debido proceso legal" que

empleamos en el proyecto es mejor que la frase o la terminologia que se ha empleado en la Constitucion de Malolos, y digo esto, no obstante la admiracion que debemos profesar y tener con respecto a ese documento.

Mr. President, I just want to say a few words, and I will be through.

The, history of the world is the history of man and his arduous struggle for liberty. And the history of the Philippines is the history of the Filipinos and their gigantic struggle for emancipation. It is the history of those brave and noble souls who have labored, fought and bled that the government of the lash—that symbol of slavery and despotism—might endure no more. It is the history of those great self-sacrificing men who lived in an age of cruelty and suffered pain and desolation that every man might stand, under the protection of great rights and privileges, the equal of every other man.

Every right that has been won is held in sacred esteem and guarded with intense jealousy by those who possess them. To protect and preserve those rights such is the desire of the liberty-loving and the free. With this end in view, care has been taken to insert in the Constitution what is commonly known as the Bill of Rights, a comprehensive statement of those invaluable conquests of the past.

The students of American constitutional history will recall that when the United States Constitution was submitted to the thirteen original States for ratification, it did not contain a full enumeration of ancient rights, and that it was ratified only upon the promise that such an enumeration would later be made. The promise was fulfilled by the First Congress in the form of ten amendments to the Constitution. The Bill of Rights in the Federal Constitution was, therefore, the project of popular demand, consciously and conscientiously made, as against the judgment of the Constitutional Convention of 1787. So high is the regard of the American people for individual rights that the United States Congress, in enacting our Independence Law, imposed as one of the conditions the insertion in our Constitution of a Bill of Rights,

The Bill of Rights in Section 3 of the Jones Law, reproduced from similar provisions in American constitutions, both Federal and State, is well-nigh precise and comprehensive. The Committee on Bill of Rights has had relatively facile work in this connection, namely, that of adoption and adaptation. Modifications and changes in phraseology have been avoided, whenever possible. The principles have been left, couched in a language expressive of their historical background, nature, extent and limitations as construed and interpreted by the great statesmen and jurists who have vitalized them in the course of time.

It will not be possible to indulge in a thorough discussion of our proposed Bill of Rights. Every provision therein contained has a historical background too long to narrate. With the indulgence of this Body, however, I shall briefly state the sources and offer a few remarks.

I shall begin with the enunciation: NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW, NOR SHALL ANY PERSON BE DENIED THE EQUAL PROTECTION OF THE LAWS. This provision is so broad that it may rightly embrace all of our liberties, personal, civil and political (*Gillespie v. People*, 188 Ill. 176, 52 L. R. A. 283). The provision simply means that the rights and the lives of all persons within the territorial limits of the country are protected by "due process of the law". The fundamental principle of "due process of law" has not been fully defined by the courts, which have contented themselves with merely applying the principle to specific cases as they arise. (*Twining vs. New Jersey*, 211 U.S. 78.) Lord Coke said that "due process of law" conveys the same meaning as "law of the land" used in the Magna Charta and the Petition of Rights. This interpretation has been accepted by the United States Supreme Court. (*Murray vs. Hoboken Land and Improvement Co.*, 18 How. 272, 15 L. ed. 372.) According to Daniel Webster in his classic argument in the Dartmouth College case, "By the law of the land is most clearly intended the general law, which hears before it condemns, which proceeds upon inquiry, and renders judgment only after

trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." (Cited in *U.S. vs. Ling Su Fan*, 10 Phil. 104.) The clause on equal protection of the laws seeks to abolish class distinctions and was inserted in furtherance of the principle of liberty, which is the greatest of all rights.

PRIVATE PROPERTY SHALL NOT BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION. This provision, while recognizing the sanctity of private property, also recognizes the existence of the power of eminent domain inherent in sovereignty to be exercised by the Government subject to the condition that just compensation be paid and the due process clause of the Constitution observed. (*Visayan Refining Co. vs. Camus*, 40 Phil. 581.) Our Code of Civil Procedure lays down the manner by which the power may be properly exercised. (Secs. 241 et seq.) There are also special laws (Act 1459, Secs. 79 et seq., Acts 284, 1258, 2726). Among the Romans, private property could be taken for public use only upon payment to the owner of a value estimated by "good men." It is not surprising, therefore, to find in Article 240 of our Civil Code—which is of Roman Law origin—a provision to the same effect. The Magna Charta provides that no one shall be deprived of his property except by the law of the land or by the judgement of his peers. The Code Napoleon (1807), which is also based on Roman Law, requires "a just and previous indemnity" in such cases.

The Malolos Constitution expresses the same idea (Article 67, Title IV). As proposed, the provision is the same as the last clause of the Fifth Amendment to the United States Constitution and the last sentence of the first paragraph of Section 3 of the Jones Law. According to our Supreme Court, just compensation means "fair and full equivalent of the loss sustained." (*City of Manila vs. F. Estrada*, 25 Phil. 208.)

Personal security against unreasonable searches and seizures is a necessary requisite of liberty. Modification of the provision in the Jones Law on the subject is proposed to make it conform entirely to the Fourth Amendment to the United States Constitution which reads:

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED AND NO WARRANT SHALL ISSUE BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

Two things are prohibited by this provision. They are unreasonable searches and unreasonable seizures. Reasonable searches may be allowed and, if the thing sought is found, it may be seized. Searches and seizures are reasonable when there exists a probable cause therefore, and they may be effected when a warrant is obtained for the purpose in the manner provided by law. But even with a warrant, entry into a dwelling is not always legal, as when it is made to secure evidence to be used against the owner in a criminal case. (*Could v. U.S.*, 55 U.S. 298).

It has been suggested that the issuance of a search warrant be also conditioned upon the examination by the issuing magistrate of the complainant and witnesses and the taking of their depositions in writing. This requirement, however, is already found in Section 90 of our Code of Criminal Procedure, and its insertion in the Constitution is thus unnecessary. I would, however, offer no objection to the incorporation.

The "process" warrant is characteristically and peculiarly Anglican. It arose out of a practice in England of issuing general warrants which authorized "searches in any place, for anything." Even in the colonies, there was a practice of issuing writs of assistance, so called, to revenue officers which empowered them to search places believed to contain smuggled goods. That practice was denounced by James Otis as "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law that ever was found in an English law book." (*Boyd v. U. S.* 616; *U. S. vs. de los Reyes*, 20 Phil. 469). Those practices in England and

the colonies were fresh in the minds of the framers of the United States Constitution, and they surrounded the issuance of warrants with necessary safeguards against arbitrary police measures.

The "general" warrant received its fatal blow in the famous case of *Wilkes*, Lord Halifax issued a general warrant for the arrest of an unknown author of the libelous *Number Forty-Five*, North Britain. No particular individual was described in the warrant, but the police were empowered to arrest a person they might think was guilty. Many innocent persons were arrested, and their papers were seized. *Wilkes* was not described in the warrant. His victory in that case was rightly called by Judge Bradley "landmark of English Liberty." (*Boyd v. U. S.*, *supra*.) That case is "sufficiently explanatory of what was meant by unreasonable searches and seizures." (*Ibid.*)

It is interesting to note that the Spanish constitutions of 1845 and 1876 prohibited the entrance into a private house "except in the cases and in the manner expressly provided by law." This provision led to the insertion in the Spanish Penal Code (which was made applicable to the Philippines) of certain provisions penalizing violation of domicile and trespass upon dwelling. The Malolos Constitution also provides for the inviolability of domicile, papers and effects. (Article 10, Title IV.) But inviolable as the home may be, it can neither be made the shelter of "crime and bad faith" nor converted into "a citadel for aggression" within whose walls is created disorder which affects the peace of the community. (*U. S. v. Vallejo*, 11 Phil. 193.) The Malolos Constitution provides that authorities, in pursuit of an offender found *flagrante delicto* and seeking refuge in his or another house, may enter said house for the purpose of apprehending the criminal. (Article 10, Title IV.) And, under our existing laws, when a crime is committed in the presence or within the hearing of a police officer, the latter may arrest the criminal without a warrant.

The Committee on Bill of Rights also recommends the insertion of the following precept: THE LIBERTY OF ABODE AND OF CHANGING THE SAME WITHIN THE LIMITS PRESCRIBED BY LAW SHALL BE GUARANTEED. One needs only to direct his attention to countries where this right is withheld to find the necessity for such a provision in his own. Liberty carries with it the right of a man to live where he thinks he can best pursue the ends of life. The right may, however, be restricted by the Government to certain localities for rea-sons of public health or policy, provided due process of law is observed. (*Rubi Provincial Board of Mindoro*, *supra*.) The Malolos Constitution, in Article 11, Title IV, allowed change of domicile only "by virtue of a final judgment by a competent court."

Although the right is deeply imbedded in the jurisprudence of both the United States and the Philippines, the necessity for the insertion of the provision in this jurisdiction suggests itself. (*Vilvencio Lukban*, 39 Phil. 778.) The incorporation of a provision in the Bill of Rights guaranteeing liberty of abode and of changing the same would serve to confirm and strengthen an existing right.

The privacy of correspondence and communication is expressly recognized, subject to the ever-prevailing police power of the State. Letters or messages are usually carried by the agencies of the Government, and unless adequate safeguards are provided for, their privacy may be wantonly violated and great harm inflicted upon the citizens as a result. The precept reads: THE PRIVACY OF COMMUNICATION AND CORRESPONDENCE SHALL BE INVOLABLE EXCEPT UPON LAWFUL ORDER OF THE COURT. This provision is not found in either the Jones Law or the United States Constitution. The absence of such a provision in the "the noble Charter of 1878" is probably due to the fact that its framers considered the precept as already embodied or implied in the general provision guaranteeing the enjoyment of life, liberty and property. They did not think of the subject, just as the first lawmakers of Rome did not think of punishing parricide. Neither did such a necessity appear among the English people. Had Charles I threatened letters, the Petition of Rights would have mentioned privacy of communication and correspondence as one of the grievances of the English people. A similar provision is found

in the Malolos Constitution. (Articles 12 and 13, Title IV) and in the constitutions of Spain, Italy and Japan.

No system of liberty is complete which does not guarantee religious freedom. The following portion now found in the Jones Law is incorporated: NO LAW SHALL BE MADE RESPECTING AN ESTABLISHMENT OF RELIGION OR PROHIBITING THE FREE EXERCISE THEREOF, AND THE FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP, WITHOUT DISCRIMINATION OR PREFERENCE, SHALL FOREVER BE ALLOWED. NO RELIGIOUS TEST SHALL BE REQUIRED FOR THE EXERCISE OF CIVIL OR POLITICAL RIGHTS.

It was Lord Mansfield who said, "There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the precepts and spirit of the Christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy." In England, the first step towards religious toleration was accomplished by passage in 1688 of the English Toleration Act guaranteeing privileges to dissenters. Reactionary measures were passed later under Queen Anne, but they were repealed by the Hanovers. On the accession of George II, dissenters were admitted to civil offices. Law against the Roman Catholics were likewise gradually softened. In 1858 civil disabilities were totally removed.

The colonies were ahead of the mother country in establishing religious toleration (Stevens, Sources of Constitution of the United States, 214). This was so because, whereas in England there was an established religion in the colonies there was a medley of faiths, that no religion could claim superiority over the others, thus rendering persecution impossible (Green, History of the English People, 216). In the Constitution of the United States, it is provided in Article VI that no religious test shall ever be required as a qualification to any office of trust. This is followed and complimented by the provision in the First Amendment that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The foregoing are not prohibitions upon the States, but practically all the States have adopted similar provisions.

The Spanish constitutions of 1869 and 1876 established a state religion for Spain but guaranteed free practice of any other (U. S. vs. Balcorta, 26 Phil. 273). Said constitutions were not made applicable to the Philippines: It was the treaty of Paris of December 10, 1898, which first introduced religious toleration in our country (Article X). President McKinley's instructions to the second Philippine Commission reasserted the right which was later incorporated in the Philippine Bill and in the Jones Law.

INVOLUNTARY SERVITUDE IN ANY FORM SHALL NOT EXIST IN THE PHILIPPINE ISLANDS EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED. The foregoing statement is the provision found in the Jones law minus "slavery," which is omitted because it is a form of "involuntary servitude" embraced within the comprehensive term.

Little need be said in this regard. To recognize any form of involuntary service would be take a backward step—to make a shameful retreat—to the days when people bowed before wealth and became abject in the presence of a little few. We are beneficiaries of democracy, and we should endeavor to march forward, ready to hand over to the succeeding generations the flaming torch of individual freedom.

Now, as to titles of nobility.

The United States was born of the misrule of the English monarchy. The Americans wanted equality in the Republic which they established. The Constitution, therefore, was made to contain Prohibitions against the granting of titles of nobility, not only by the Federal Government but by the States as well. (Sections 9 and 10, Article I). A provision of this nature is also found in the Articles of Confederation (Section 1, Article VI). It was even proposed in 1810 to amend the Constitution so as to penalize violators of the provision with forfeiture of

citizenship and incapability of holding an office of trust or profit under the Government. The proposed amendment lacked the necessary ratifying vote of only one State (Norton, *The Constitution of the United States, Its Sources and Applications*, 90). The *Federalist* (No. 84), speaking of the importance of the prohibition against titles of nobility in the Federal Constitution, says: "This may truly be denominated the cornerstone of republican government; for so long as they are excluded, there can never be serious danger that the Government will be any other than that of the people."

The Filipinos have also suffered under the misguided rule of monarchy and upon the first chance of drafting a constitution of their own, they provided that no Filipino could accept "honors, decorations or orders or titles of honor and nobility from foreign nations without authorization of the Government." The Government was also forbidden from establishing or granting them to any Filipino. (Malolos Constitution, Article 32, Title IV.) 33

It is proposed that the following provision now found in the Jones Law be incorporated: NO LAW GRANTING A TITLE OF NOBILITY SHALL BE ENACTED AND NO PERSON HOLDING ANY OFFICE OF PROFIT OR TRUST IN THE PHILIPPINES SHALL, WITHOUT THE CONSENT OF THE NATIONAL ASSEMBLY, ACCEPT ANY PRESENT EMOLUMENT, OF-FICE OR TITLE OF ANY KIND WHATEVER FROM ANY FOREIGN STATE.

Since the beginning of time, men have always been found grouped together for the promotion of the general welfare. In ancient times, tribal organizations were formed for common protection and mutual help. As industries developed, guilds were organized to insure fair treatment of certain classes of workers. And as civilization marched, the associative principle was developed. Associations of all sorts were organized, unions of every denomination were formed—and just as it would be futile to enumerate and discuss the various associations as we find them today, so would it be impossible to overstate the influence they are exerting and the important place they are occupying in modern society. They demonstrate very clearly the spirit of self-government. They make people self-reliant, energetic and active.

There is no doubt that the right of association can become dangerous as was the case with the French clubs of the First Revolution. But it is also undeniable that the more elementary the more important the right is, the more dangerous, the more liable to abuse it becomes, and that unless the right is exercised with prudence and caution—unless the privilege-holder is guided by reason—evil and disastrous consequences will ensue. This might just as well be said of every other individual right. To offset this danger, limitations should be imposed. THE RIGHT TO FORM ASSOCIATIONS OR SOCIETIES FOR PURPOSES NOT CONTRARY TO LAW SHALL NOT BE ABOLISHED.

The foregoing provision is not found in the Organic Law or in the United States Constitution, but the right is recognized here and in America to a greater extent than in continental Europe, subject to certain limitations prescribed by law. The Malolos Constitution provides that no Filipino shall be deprived of the right of joining any association for all the objects of human life not contrary to public morals (Article 20, Title IV).

The provision NO PERSON SHALL BE IMPRISONED FOR DEBT is intended to prevent the commitment of debtors to prison for liabilities arising from action *ex-contractu*, express or implied, whether the liabilities were incurred with or without fraud, and not for damages arising *ex-delictu* which are punishments for the wrong committed, nor to fines and penalties imposed by courts as punishments for the crime (*Freemen v. U.S.*, 217 U.S., 539) or the violation of ordinances (*U.S. v. Rodriguez*, 28 Phil. 759).

In the draft submitted by the Committee on Bill of Rights, the prohibition is not extended to nonpayment of taxes. It is a well-settled doctrine in American constitutional law that a tax is not a debt and that the abolition of imprisonment for debt has no application to taxes. (Cooley, *The Law of Taxation*, Section 22, page 91, Vol. I).

We are expected to emphasize in the Constitution not only the rights but also the duties of Filipino citizens. One of these duties is the payment of taxes, and the extension of the constitutional provision to delinquency in the payment of taxes would not be much of an encouragement in the performance of these primary duties of citizenship. If the evil desired to be corrected refers to imprisonment due to nonpayment of the cedula tax, then the prohibition should at most be limited to imprisonment for nonpayment of this personal tax. A sweeping inhibition may prove disastrous.

The prohibition NO LAW IMPAIRING THE OBLIGATION OF CONTRACTS SHALL BE ENACTED is intended to secure private rights (*Calder v. Bull*, 3 Dallas 386, 1 L. ed., 648) and has been relied upon by private litigants for the protection of property rights more often than any other sentence of the Constitution (*Stimson, The American Constitution as It Affects Private Rights*, 160), thus confirming Henry Maine's prediction that this clause in the Federal "Constitution would prove to be "the bulwark of American individualism against democratic impatience and socialistic fantasy" popular Government, 217.)

The obligation of contracts is the law which binds the parties to perform their agreement, which must not be contrary to law, morals or public order. Any law which enlarges, abridges or in any manner changes the intention of the parties, necessarily impairs the contract itself and is null and void. (*U.S. v. Diaz Conde*, 20 O. G. 1894) The law to be void must impair the obligation of valid and existing contracts and the impairment must be substantial (*Detroit Union R. Co. v. Michigan*, 242 U.S. 284; *Gaspar v. Nolina*, 5 Phil. 197).

The prohibition in the United States Constitution is directed towards the state legislatures. (Section 10, Article 1, U.S. Constitution.)

The prohibition that Congress shall not enact bills of attainder or ex post facto laws is repeated as to the States, with the addition that the States shall not impair the obligation of contracts.

The provision is twice referred to in *The Federalist* (Nos. 7 and 11). In No. 44 we read:

"Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts are contrary to the first principles of the social compact, and to every principle of sound legislation. The former two are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us that additional fences against these dangers ought not to be omitted. Very properly, therefore, has the Convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interest of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

Black believes that the prohibition was inserted in the Federal Constitution due to the financial condition of the country at the close of the Revolution and the disposition of the States then as to the enforcement of public and private obligations. It was realized that the States would repudiate their debts if not restrained by a constitutional provision. (Black, Henry Campbell, *American Constitutional Law*, p. 708.)

Although most state constitutions already had provisions on the subject, there was a strong desire to issue paper money even to the extent of discharging previous contracts by the use of that kind of money, which was almost

worthless. Furthermore, the various States were inclined to make liberal provisions for the relief and encouragement of the debtors to the injury and detriment of creditors and to the serious impairment of public and private credit. The prohibition was, therefore, inserted in the Constitution to prevent the passage of state laws which would release debtors from their obligations to pay. In addition to this, we find that contracts of the States themselves had been repudiated, "The separate legislatures have so often abused the obligation of contracts," wrote Jefferson, "that the citizens themselves chose to trust it to the general (national) rather to their own (State) authorities." "On the same subject, Chief Justice Marshall said a source of legislation had prevailed in the States which weakened confidence of men in man." (Quoted by Norton, *The Constitution of the United States. Its Sources and Applications*, 92-93.)

The prohibition was added in limiting state powers when it was pointed out that the term *ex post facto* relates only to crimes and criminal proceedings. The provision was accordingly framed to cover civil cases. (Norton, *ibid*, 92.)

While the prohibition is directly against State action alone, essentially the same protection is afforded against similar legislation by the Fifth Amendment providing that no person shall be deprived of property without due process of law. The guarantee of due process is broader than the protection afforded by the obligation of contracts clause since it extends to noncontractual as well as contractual rights. In the case of *Hepburn v. Griswold*, 5 Wall, 603, one of the legal tender cases, the United States Supreme Court, speaking of the prohibition with regard to the impairment of the obligation of contracts, said:

"But we think it is clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, necessarily, in its direct operation, impairs the obligation of contracts, and is inconsistent with the spirit of the Constitution."

THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS SHALL NOT BE SUSPENDED UNLESS WHEN, IN CASES OF REBELLION, INSURRECTION, OR INVASION, THE PUBLIC SAFETY MAY REQUIRE IT, IN EITHER OF WHICH EVENTS THE SAME MAY BE SUSPENDED WHEREVER DURING SUCH PERIOD THE NECESSITY FOR SUCH SUSPENSION SHALL EXIST.

By the ancient writ of habeas corpus (have the body) the English court orders the person having a prisoner in his charge to bring him before it for inquiry as to the legality of his detention. Although the privilege of habeas corpus may be said to antedate the Magna Charta of 1215, the first Habeas Corpus Act was passed only in 1679. The operation of the Act has in a way been annulled and formal accusations and public trial of detained persons indefinitely deferred by the passage annually of Suspension Acts.

The power to suspend the privilege should be vested in the Chief Executive and should be so stated. Section 12(3), Article IX, of the draft gives the power to suspend the writ of habeas corpus to the President. The United States Constitution does not vest that power in the President, and because it is mentioned in Article I, which deals with legislative powers, it has been held that the power is confided to Congress alone (*Ex parte Hollman*, 4 Cranch, 75, 101, 2 L. ed. 554; *Ex parte Milligan*, 4 Wall, 116, 18 L. ed. 281.) The power, however, was at one time given to President Lincoln by the Congress (Norton, *The Constitution of the United States, Its Sources and Applications*, 83-88. The President is the Commander-in-Chief of the army and navy, and the power may be exercised by a single individual rather than by a legislative body. Prompt action is necessary in cases of public danger, and suspension of the writ is usually ordered after martial law has been declared in a particular district. (Black, *American Constitutional Law*, 7037.)

NO EX POST FACTO LAW OR BILL OF AT-TAINDER SHALL BE ENACTED. This provision is found in

the American Federal Constitution (Section 9, Article 1) and is applicable to the States. An ex post facto law is one which makes punishable an act not punishable when committed. It creates, or aggravates the crime, increases the punishment or changes the rules of evidence for the purpose of conviction. The prohibition against the passage of an ex post facto law is an additional bulwark of personal security—protecting the citizen from punishment by legislation operating retrospectively.

The phrase ex post facto has a technical meaning and refers to crimes and criminal proceedings. It was in this sense that it was used in English. It was also in this sense that the Convention of 1787 understood it. (*Caider vs. Bull*, supra; *Watson vs. Mercer*, 88, 110; *Suterlee vs. Mathewson*, 2 Peters 380; *Kring v. Missouri*, 107 U. S. 221.) This interpretation was upheld by our Supreme Court. (*U. S. vs Ang Kan Ko*, 6 Phil, 376.) A bill of attainder is a legislative act which inflicts punishment without judicial trial (*Commings v. State*, 4 Wall, 277, 18 L. ed. 356). In England, it was an act of Parliament by which a man was tried, convicted and sentenced to death without a jury, without a hearing in court, without hearing the witnesses against him, and without regard to the rules of evidence. His blood was attainted or corrupted, rendering him devoid of all heritable quality—of acquiring and disposing property by descent (*Ex parte Garland*, 4 Wall. 333, 18 L. ed. 366). If the penalty imposed was less than death, the act was known as a bill of pains and penalties. Bills of attainder, like ex post facto laws, were favorite methods of Stuart oppression. Once the name of Thomas Jefferson was included in a bill of attainder presented to Parliament because of his reform activities, but the bill was not pressed to a vote.

Often such bills were "stimulated by ambition or personal resentment, and vindictive malice" (*Caider vs. Bull*, supra). A well-known case illustrating the ruthless manner in which a bill of attainder was resorted to was that of Thomas Wentworth, Chief Adviser of Charles I. He was brought to impeachment, charged with attempting to subvert the liberties of England. He defended himself so ably that his enemies, fearing his acquittal, withdrew the impeachment and a bill of attainder was passed instead. Wentworth was beheaded. Bills of attainder were also passed in the Colonies (*Norton, The Constitution of the United States, Its Sources and Applications*, 85). The prohibition in the Bill of Rights, therefore, seeks to prevent acts of violence and injustice brought about by the passage of such bills.

The rights of persons accused of crimes are considered of primordial importance. When a person is indicted, he forms one party, and the governmental society forms another. It is evident that, unless strong and strict guarantees are given the former, there can be no security against oppression by the latter. The Government is desirous of carrying into effect its avowed purpose of repressing crimes and criminals through the exercise of superior powers which are likely to be abused in the absence of effective check or measures. History records numerous trials in various countries which are as shocking to the feelings of humanity as they are to the laws of logic. With all the constitutional guarantees in the United States, Prof. Edwin W. Borchard, of Yale University, presents an appalling cross-section of miscarriage of justice in the American continent in his book, entitled *Convicting the Innocent*.

Reforms in penal procedure have been slowly accomplished due to the fact that the persons affected are generally uninfluential, and lawyers are usually attracted more to the civil than to the criminal branch of the profession.

It is the duty of the present generation, through this Constitutional Convention, to preserve the rights of accused persons, rights won after long and arduous struggles in the past. These rights are already embodied in the present Organic Law and in our Code of Criminal Procedure.

The most comprehensive and far-reaching of these rights is that which declares that no PERSON SHALL BE HELD TO ANSWER FOR A CRIMINAL OFFENSE WITHOUT DUE PROCESS OF LAW.

The accused is deemed to have had due process of law if he "has been heard in a court of competent jurisdiction, proceeded against under the orderly process of law, and punished only after inquiry and investigation, upon notice

to him with an opportunity to be heard and judgment awarded within the authority of the constitutional law." (Ong Chong Wing v. U. S., 218 U. S. 272, 54 L. ed. 4040.)

ALL PERSONS SHALL BEFORE CONVICTION BE BAILABLE WITH SUFFICIENT SURETIES, EXCEPT FOR CAPITAL OFFENSE; EXCESSIVE BAIL SHALL NOT BE REQUIRED. Even in the freest countries, there exists a painful yet unavoidable contradiction that while an accused is presumed to be innocent until the contrary is proved, he is nevertheless arrested and deprived of his liberty until trial takes place. To mitigate this harshness and to prevent long and undue imprisonments, the constitutions of all free nations guarantee the right of bail. As far back as 1444, the Parliament of England passed an act which required sheriffs and their officers to "let out of prison all manner of persons upon reasonable sureties of sufficient persons." To prevent the defeat of the right of bail, it is provided that "excessive bail shall not be required."

But the right should not be extended to capital cases, since the punishment of death or life imprisonment for one such case does not find any equivalent in money and because the offense committed is so grave that the escape of the offender is sought to be prevented. A suggestion has been made that the provision of Section 63 of the Code of Criminal Procedure—"All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong"—be adopted in lieu of what is provided in the draft. This is not believed necessary, especially in the light of the decision of our Supreme Court in the case of Montalbo vs. Santamaria, 54 Phil. 955, but there is no serious objection to accepting the suggestion.

It is also important that a well-regulated penal trial be provided for. The following provision forms the basis of a carefully elaborated system: IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL BE PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS PROVED, AND SHALL ENJOY THE RIGHT TO BE HEARD BY HIMSELF AND COUNSEL, TO DEMAND THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM, TO HAVE A SPEEDY AND PUBLIC TRIAL, TO MEET THE WITNESSES IN HIS BEHALF. HE SHALL NOT BE COMPELLED TO BE A WITNESS AGAINST HIMSELF.

The presumption of innocence spoken of in the first part of the foregoing provision is not found either in the Jones Law or in American constitutions. It is, however, a rule of law recognized by all of civilized mankind and has found a place in our Code of Criminal Procedure (Sec. 58). No person accused of a crime can hope to receive a fair and impartial trial if at the outset he is deemed guilty. It is the burden of the prosecution to prove the guilt of the defendant beyond a reasonable doubt. If the prosecution fails in this regard, the defendant is entitled to an acquittal. And the acquittal has to be total. The defendant should either be declared guilty or not guilty. There can be no such thing as "half and quarter proof" and "proportional punishments," as formerly recognized in continental Europe. The judge cannot say: "We cannot find you guilty now, but we may pick you up for the same offense next time." (Liber, Civil Liberty and Self-Government.) In a sense, therefore, this provision has led to the prohibition against double jeopardy, which I shall discuss later.

The right of an accused to be heard by counsel in a capital case was denied in England for a long time. This deficiency in English procedural law was supplied in the United States Constitution by the guarantee of counsel in all cases. The defect in the English system was remedied later in 1836. (Cooley, Constitutional Limitations, 330-338.)

It is the right of a person accused of a crime to demand the nature and cause of the accusation against him. He should know for what reason and with what crime he is being charged. The Petition of Rights denounced the former practice in England of imprisoning freemen "by the king's special command, without any charge." It also complained of the denial of the right to a speedy trial. As a result, "letters patent" were issued by the king,

ordering the clearing of jails of all prisoners for the purpose of bringing them to trial. This was done twice a year. A provision for speedy trial may also be found in Malolos Constitution {Article 8, Title IV.) A speedy trial has been defined as a trial held at such a time as shall afford the prosecution time to prepare, after a fair and honest exercise of a reasonable diligence, for trial (U. S. vs. Fox, 3 Mont. 512). It should also be public in order to off-set any danger of conducting it in an illegal and unjust manner.

The accused has also the right to meet his witnesses face to face. This right may, however, be waived. (Diaz vs. U. S 442, 56 L. ed. 500.)

There was a time in England when the deposition of a witness was taken and read in court. This prevented the accused from being confronted by the witnesses against him and of cross-examining them. _ Sir Walter Raleigh was condemned to death on the written testimony of a single witness who had in the meantime recanted his accusations (Norton, The Constitution of the United States, Its Sources and Applications, 219).

The practice in Imperial Rome conforms to the rule of confrontation and is illustrated by the case of St. Paul. Festus, the Roman Procurator of Judea, answered the accusers of St. Paul thus: "Romans are not accustomed to give any man up before the accused has met his accusers face to face and has been given a chance to defend himself against the charges." (Acts XXV, 16.) And when St. Paul was sent before Felir, Roman Governor of Caesarea, the Governor, after reading the letter of accusation, said: "I will hear thee when thine accusers are also come" (Acts XXIII, 35.)

The privilege granted the accused to have compulsory process to compel the attendance of witnesses in his behalf, as practiced in England at the time the United States Constitution was being drafted, was not allowed in ordinary original cases. The framers of the United States Constitution improved upon this practice, and as employed today the privilege extends to all criminal cases.

The prohibition against self-incrimination is found in the Fifth Amendment to the United States Constitution and is one of the cornerstones of English liberty. This prohibition arose out of a practice in England and the colonies of compelling the accused to be a witness against himself.

Even a criminal is entitled to the protection of just and human laws: hence, the requirement that EXCESSIVE FINES SHALL NOT BE IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED. The provision of the Jones Law corresponds to the third and last clauses of the Eight Amendment to the United States Constitution which is a transcript of a clause in the Bill of Rights framed after the English Revolution in 1688.

The excessive fine under the Magna Charta was the penalty or forfeiture which deprived a man of his "contentment"—of his living and ability to pursue his calling or profession.

Cruel and unusual punishments are prohibited. As we read ancient and medieval history, we learn of criminals being whipped, their ears and noses cut, their eyes plucked out, and their cheeks branded. We read of them being hanged, thrown into dungeons to die of thirst and cold and hunger, or left in the forests for wild birds and beasts to feast on. Blackstone relates that as late as 1759 the punishment for treason in England was terrible. A guilty person was hanged by the neck and disemboweled while still alive. His head was cut off and his body divided into four parts for disposition by the king. The punishment was mitigated in 1814 by Parliament. In continental Europe the punishment was even more severe (Norton, The Constitution of the United States, Its Sources and Applications, 224). Acts of cruelty are not worthy of human beings—of the name of man—and they should never be tolerated in a land where law and justice obtain.

The Supreme Court of the United States in *Weems vs. U. S.*, 217 U. S. 349, held that the penalty of cadena temporal, which is prescribed by the old Penal Code for the crime of falsification of a public document by a

public official, is a cruel and unusual punishment. It is generally believed, however, that the Federal Supreme Court was misled by the English Translation of the Penal Code, and our local Supreme Court declined to extend the ratio decidendi to other cases (U. S. vs. Pico, 18 Phil. 386).

Finally, it is one of the universal maxims of Angli-can liberty that NO PERSON FOR THE SAME OFFENSE SHALL BE TWICE PUT IN JEOPARDY OF PUNISHMENT. This provision, now found in the Jones Law, corresponds to the second clause of the Fifth Amendment to the American Federal Constitution. It descended from the days when sanguinary punishments were frequently resorted to by despots. A defendant in a criminal case should be adjudged either guilty or not guilty. If he is not guilty, the prosecution can-not appeal. There can be no double jeopardy of punish-ment.

The decision of the Supreme Court of the United States in *Kepner v. United States*, 195 U. S. 100, has not escaped criticism, and a suggestion has been made to set aside the ruling in the jurisdiction by the cons-titutional provision to the contrary. The principal ob-jective was either to permit appeal in case of acquittal of the accused or at least to provide for a review at the instance of the Government by an appellate court of questions of law, without disturbing the verdict in favor of the defendant. The following quotation, however, from Prof. Willoughby (Constitution of the United States, 1163-1164) is illuminating and, to my mind, decisive:

"Despite this argument, the weight of authorities, both State and Federal, is so overwhelming that, as stated earlier in this chapter, a verdict or judgment In a lower court of competent jurisdiction is final and conclusive as to the defendant. Provision has, how-ever, been made in some of the States, and similar action has recently been taken by Congress, to provide for a review at the instance by Congress, to provide for a review at the instance of the Government in a superior court of questions of law, with, however, the proviso that a verdict in favor of the defendant shall not be set aside. The objection, however, to such a proceeding is not only that it raises in the superior court merely moot questions, but that, irrespective of whether the superior courts will feel themselves bound or even constitutionally qualified to pass upon points with reference to which they are not a Die to issue any appropriate orders, there is the objection that the defendant, having no reason for contesting them, the decision will be based upon ex parte argu-ment, with all the evils generally recognized as there-upon attending.

"The Federal Act referred to was that of March 2, 1909, which provided as follows: That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit: From a decision or Judgment quashing, setting aside, or sustaining a de-murrer to any indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of a statute upon which the indictment is founded. From a decision attesting a judgment of conviction for insufficiency of the indectment, where such decision is based upon the invalidity or construc-tion of the statute upon which the indictment is founded. From a decision of judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy. The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases. Pending the prosecution and determination of the writ of error in the foregoing instances, the de-fendant shall be admitted to bail on his own recog-nizance: Provided, That no writ of error shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant'."

The following provision is not in the report of the Committee on Bill of Rights, and, although deemed a surplusage, is a good guiding principle and may be allow-ed to stay: THE STATE SHALL NOT DENY TO ANY PERSON (CITIZEN) FREE ACCESS TO THE COURTS BY REASON OF POVERTY.

The provision in the Jones Law to the effect that NO LAW SHALL BE PASSED ABRIDGING THE FREEDOM OF SPEECH OR OF THE PRESS, OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE AND

PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES was copied verbatim from the First Amendment to the United States Constitution. A similar provision is found in the Malolos Constitution (Article 20, Title IV). The Committee on Bill of Rights, in its report, recommends the incorporation of the precept without any change. In the final draft of the Constitution now submitted for the consideration of this Body, the following provisions are, however, substituted:

"No law shall be passed abridging the freedom of speech or the right of the people peaceably to assemble and petition the Government for redress of grievances.

"There shall be no limitations to the Freedom of the press except those required by good morals and public order. No publication shall be suppressed except by final decision of a competent court."

It should be observed that the limitations mentioned with respect to the freedom of the press are all well-known and sanctioned under the existing provision in the United States Constitution. A careful analysis of the proposed change will show that it is not an improvement upon the time-honored precept as embodied in the Jones Act. Upon the other hand, let us not create the impression that the freedom of speech is more important than the freedom of the press. Why restrict or liberalize one and not the other when both are equally important? The limitation as to "good morals," which we cannot define in the Constitution even if we want to, should be left out. Also, the suppression of a given publication by final order of a competent court is an unwarranted limitation upon the freedom of the press, and is ineffective at that, because pending final judgment of the court, the publication may continue. I, therefore, plead for the acceptance of the original recommendation of the Committee on Bill of Rights, that is to say the approval of the following precept: "No law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for a redress of grievances."

Now a few words concerning the freedom of speech and of the press and of the right of petition.

Free speech is, to quote Wendell Phillips, "at once the instrument, and the guarantee, and the bright consummate flower of all liberty." A free and vigilant press is equally indispensable. It is "one of the chief educators of the people—an element so pervading in its influence, and withal so powerful, that it cannot be overlooked" (Cooley, Constitutional Limitations, 641; cited by Malcolm, Philippine Constitutional Law, 413-414). When a repression of political and religious discussion became intense—when censorship of the press was resorted to most vigorously by the Long Parliament in England—John Milton, that great historiographer of Cromwell, denounced the suppression of truth and appealed for "the liberty to know, to utter, and to argue freely according to conscience, above all liberties" (Areopagita, 73, 74, Ambler's reprint).

Censorship existed from the time the printing press was invented in the 15th century. Before 1694, licensing acts were enacted repeatedly in England. Uncensored publications of seditious and scandalous matter were punished by death and mutilation. And it was not until the accession of George III that the English press became truly unmolested. Lord Macaulay declared that the emancipation of the press "had done more for liberty and for civilization than the Great Charter or the Bill of Rights of England" (History of England, 543). And as Mr. Justice Holmes has cautioned, "We should be eternally vigilant against attempts to check the expression of opinions" which freedom of speech and freedom of the press guarantee. (*Stromberg v. People of California*, 283 U. S. 359). Censorship also existed in the colonies until about 1755 (Tyler, History of American Literature, 113). It is related that in 1723 the illustrious Franklin left Massachusetts for Pennsylvania where his brother was imprisoned on account of a libel (Stevens, Sources of the Constitution of the United States, 221).

Freedom of the press is the right to publish the truth with good motives and for justifiable ends without previous license or censorship (6. B. C. L.. 254). Such a definition implies restrictions. "The freedom of the press is not an

absolute right that gives immunity for every possible use of language" (*Gitlow v. Sanford*, 267 U. S.). When "the words used are in such circumstances and of such a nature as to create a clear and present danger that they will bring about the substantive evil that the State has a right to prevent," then punishment may attach to him who has abused this freedom (*Schenck vs. U. S.* 249 U. S. 47).

Rizal, in *The Philippines a Century Hence*" (p. 62) and Mabini, in his *La Revolucion Filipina*, express the longing of their countrymen pleading for liberty of the press. We may well repeat now what Mr. Justice Malcolm of our Supreme Court said sixteen years ago: "A reform so sacred to the people of these Islands and won at so fair a cost should now be protected and carried forward as one would protect and preserve the covenant of liberty itself" (*U. S. vs. Bustos*, 37 Phil. 781).

The right of assembly and petition is rather the origin than a derivation of freedom of speech and of the press (*Stimson, The American Constitution as It Protects Private Rights*, 152). According to Chief Justice -Marshall, it originated "from those laws whose authority is acknowledged by civilized man throughout the world" (*Gibbons vs. Ogden*, 9 Wheat, 211). It is an important attribute of civilization and a necessary consequence of republican institutions. "The very idea of a government, republican in form," says Chief Justice Waite, "implies a right on the part of its citizens to meet peaceably for consultation in respect of public affairs and to petition for a redress of grievances" (*U. S. vs. Cruikshank*, 92, U. S. 542 23, L. ed. 588). But the persons participating in meetings should answer for the consequences of their acts. (*U. S. vs. Apurado*, 7 Phil. 422.)

Formerly, the right to petition in England was limited to redress of grievances. Later on, petitions of political subjects came into being, but Charles II regulated this right. The privilege was embodied in the Bill of Rights of William and Mary in the following language: "It is the right of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal." The present practice of petitioning the Government for the adoption of certain public measures and policies may be said to have begun in 1779 when a widely organized attempt, through numerous signed petitions, was made to procure the adoption by Parliament of a certain measure. The privilege came into special prominence in the colonies during the revolutionary epoch. The Congress of 1774 stated in the Declaration of Rights: "They (the colonists) have a right peaceably to assemble, consider grievances, and petition the king, and that all prosecutions prohibiting proclamations and commitments for the same are illegal."

It is now a settled doctrine, however, that the official conduct and the policies of public officials can be severely criticised without danger of punishment (*U. S. vs. Bustos*, 37 Phil. 731). Neither can criticism of the Constitution and legislation, of government measures or policies, be suppressed or prevented (*U. S. vs. Perfecto*, 43 Phil., 225), unless the intention be to incite rebellion and civil war (*Cooley, Constitutional Limitations*, 614).

CONCLUSION

In conclusion, I wish to state, in the name of our Committee our gratitude to the Sponsorship Committee and its Sub-Committee of Seven for their having seen fit to accept practically the whole of our report. The Tydings-McDuffie law requires that we insert in our Constitution a bill of rights. I repeat, even without this requirement; it would be inconceivable for us not to do so. There is no constitution, worthy of the name, without a bill or declaration of rights. This Bill of Rights is to be, as it were, the living gospel of the liberties of the people. It is not to be the catalogue or compilation

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of inhibitions or restrictions upon the people who are sovereign. Rather, it is to be the palladium of their liberties and immunities, so that their persons, their homes, their livelihood, their happiness and their freedom may be

saved and secured from an ambitious ruler, an envious neighbor, or a grasping state. Under it we shall have no peculiar Corpus Juris to govern the relations of the Government and the officials, no special type of administrative law as this system is known in some countries of continental Europe. We are creating a strong Executive, an assertive National Assembly, and an independent Judiciary, but no official however high in our Government may overpass or transcend the limitations that we establish in the Bill of Rights, because these limitations go to the very roots of the powers of the Government "to act at all, irrespective of time and place."

Attention has been called by a leading political scientist of our country (Dean Maximo M. Kalaw) to the necessity of formulating our Bill of Rights no longer on the basis of inherent and natural rights of man.— because this theory is now obsolete—but rather on the basis of social rights, as the State is, in the modern theory, the creator or dispenser of rights. We should not however, be allured by new and untried dogmas and theories in the formation of our Bill of Rights, and again I suggest that we adopt a conservative attitude in this connection. There is in reality nothing new in this proposed Bill of Rights. It is but a restatement of what is found in the Jones Law, and the Bill of Rights contained in this law is in turn but a reproduction of similar provisions in American constitutions, both Federal and State. The existing Bill of Rights embodied in the Jones Law is believed comprehensive enough and has worked out satisfactorily. It has become part and parcel of our jurisprudence and carries with it the interpretation given by the great jurists and statesmen who have vitalized its provisions. Again, it is better that we "keep close to the shore, let others venture into the deep." Upon the other hand, notwithstanding the fact that the Bill of Rights of the United States Constitution may be said to be founded on an obsolete theory, it has withstood the test of time, and for more than one and one-half centuries has not suffered an amendment. Congress, from time to time, has passed legislation on labor and capital and other matters affecting social conditions in America, but the American Bill of Rights has been able to adapt itself to changing conditions and environments. This shows the flexibility of the Bill. In the very draft of the Constitution we are considering, we find provisions pertaining to social justice and socialistic tendencies. For instance, we limit private ownership of agricultural land (Section 15, Article XIII); we nationalize or socialize railroads, telegraphs and other means of communications, as has been done in the United States (Section 10, *ibid*): we nationalize our natural resources (Section 13, *et seq.*); we make it the duty of the State to safeguard the social progress of the inhabitants, etc. (Section 9, *ibid*); we require the State, in the interest of social justice, to afford the necessary protection to labor, especially to women and minors, and in regulate the relations between labor and capital and landlord and tenant, both in agriculture and industry (Section 7, *ibid*), etc.

More than that, to gain economic and social fortitude, we provide in the draft for delegation of legislative authority to the President in connection with the fixing of tariff rates, tonnage and wharfage dues (Paragraph 13, Section 5, Article VII) and the promulgation of rules and regulations to carry out a declared national policy in cases of emergency (Paragraph 15. *ibid*). And yet our proposed Bill of Rights, I dare say, may be made to adapt itself to these revolutionary provisions through proper interpretation and application of the reserve police power of the State. The task in this respect will be thrown mainly on the Judiciary and to some extent on the political departments of the Government. We shall need to summon not only the learning but the vision and patriotism of our judges, so that in the process of exposition and construction of the fundamental law, they may emulate the "judicial statemanship" of the great John Marshall of the Supreme Court of the United States. Let our judges be, as it were, the vestal keepers of the purity and sanctity of our Constitution, and the protection and vindication of popular rights will, I will trust, be safe and secure in their reverential guardianship.

MR. KINTANAR: Mr. President, will the Gentleman yield?

THE PRESIDENT: The time of the Gentlemen has expired.

SPEECH OF DELEGATE ABORDO

AGAINST ARANETA AMENDMENT

MR, ABORDO: I wish to begin by congratulating all those who have participated in the preparation of the draft of the Constitution, more particularly the Chair-man of the Committee on Bill of Rights, the distinguished Delegate from Batangas. Dr, Laurel, for his conservative attitude in avoiding any radical departure from the orthodox articulation of the inalienable rights of the people.

I wish our country a clear constitution, under-standable not only to the enlightened people but also to the ordinary laymen. If there is any part of our Cons-titution which should meet this requirement, it is that part defining the inalienable rights of the people. The present one, based principally on the phrase "due pro-cess of law," is not easily understood; it is hardly understood at all by the rank and file of our people and, I venture to say, that many of us lawyers do not always remember, nor are we always sure of, the mean-ing of those words. I would say that even such great American jurists as the Justices of the Supreme Court of the United States have not always been in agree-ment as to the meaning that should be given to the phrase "due process of law."

There would be some justification in adopting in our Constitution the words "due process of law" if the same carried a well-defined meaning, which apparently is the impression of many of us. But, my friends, you have to read abundant American literature before you may say that you have finally discovered and mastered the meaning of the three mysterious words, and even after reading the copious literature that exists, explaining and expounding them, even after you have read the thousands of American decisions handed down, applying and vitalizing them, I am afraid that many of us will still be in the dark and hesitate to assert that they have finally succeeded in discovering the true meaning 'if the phrase.

The classical definition of the term "due process of law", regarded as being synonymous with the phrase "law of the land," was made by Daniel Webster in the famous Darmouth College case where he appeared as one of the counsel, a definition adopted by the Supreme Court of the United States. The same is the following:

"By the law of the land is most clearly intended the general law—a law which hears before it con-demns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

Prof. Cinco quotes this definition in his book, Phil-ippine Government and Political Law (p. 390) and is apparently satisfied with the same. This definition is, to all intents and purposes, not correct in view of the latest decisions of the Supreme Court. You will notice that the definition embraces two sentences. The first states that due process of law requires that the depri-vation shall be preceded by judgment only after trial," thereby implying a trial in a court of justice. And yet we all know that the Government in many cases de-privs a person of his property through taxes, admi-nistrative fines, etc., without trial and judgment by a court of justice. The second sentence, stating that every citizen shall hold his life, liberty and property under the protection of general rules which govern society, is simply begging the question.

Succintly stated, different meanings have been in-fused into the phrase "due process of law" during its long history. First, it was said as simply providing that no person shall be deprived of his life, liberty and property unless in conformity with law. The law could be unreasonable, either in its substance or in the pro-cedure which it prescribed for the enforcement of penal-ties. Under this original meaning, in none of the two cases would the constitutional inhibition be of any as-sistance. The second meaning given to the clause con-secrated the procedure known to common law which was later modified to include the procedure already existing and known at the time the Constitution was enacted. With this view, there could be no develop-ment in legal procedure. The third meaning appended to the clause is that no one shall be deprived of his rights without the intervention of a court of justice acting with a jury. It should be noticed that this requirement was expressly extended not only to

life and liberty but also to property. The fourth meaning ascribed to the clause is that it guarantees a reasonable procedure before a person may be deprived of his life, liberty and property. And the last and most modern meaning given to the term is that the substantive law authorizing the deprivation of life, liberty and property must be reasonable.

After this exposition, you will understand how truly an author has said, referring to the phrase "due process of law":

"My excuse for this address is a belief that the ancient words do not (various court decisions to the contrary notwithstanding) speak to us with the same voice, or connote the same mental assumptions, or suggest the same background, political and social, as they did two generations ago, or even when my generation at the bar took the professional oath." (32 Harvard Law Review, p. 218.)

We propose that the clause guaranteeing due process of law be restated as follows:

"No person shall be deprived of his life, nor imprisoned, unless in conformity with a reasonable law and by order of a competent court of justice decreed after reasonable procedure and hearing prescribed by law.

"No public officers shall curtail in any way the liberties of an individual, nor deprive him of his property unless in conformity with a reasonable law and procedure."

In the draft of the Constitution, which we have under consideration, a new guaranty has been incorporated: no publication shall be suppressed except by final decision of a competent court. Now, if there are weighty reasons that justify the guaranty, I believe that with more reason we should expressly provide that no person shall be deprived of life, or imprisoned, unless by a final decision of a competent court of justice. It is doubtful whether the guaranty is duly protected under the due-process-of-law clause as interpreted and expounded by American courts. I believe that the matter is of sufficient importance to justify an express declaration of such a constitutional guarantee. On the other hand, while a person shall not be put to death or imprisoned unless by a final decision of a court of justice, no court intervention is required in connection with the other rights and liberties of a person.

Because of such considerations, I believe it necessary to restate "due process of law" in two sentences—one to define the term in connection with life and liberty, and the other to define the same term in connection with property and other rights of the people.

Before the phrase "due process of law" received the broad meaning which it now has, courts had declared unconstitutional some statutes which did not conflict with any express provision of the Constitution. To justify the declaration of unconstitutionality, the courts at that time said that such laws were against natural justice, against the social compact, against the insuperable incidents of republican government. Gradually, however, a new, enlarged meaning was attached to the phrase "due process of law," making it synonymous with reasonableness. In this connection, I shall quote from an article, entitled "The Natural Law Background of Due Process" by Mr. Grant, published in the Columbia Law Review, Vol. 31, page 57, the following:

"Before many years had passed, a broadened construction of the 'due process' clauses of the fifth and fourteenth amendments made future references to 'natural justice' and 'the social compact' less necessary. Today, of course, under the all-persuasive interpretation of this magic phrase, to refer to 'insuperable incidents of republican government' as the basis of judicial review would be the acme of the superfluous. But the doctrine was not without its importance in guiding the development of this child of the Civil War. In fact, the modern definition of 'due process' is merely the 'natural justice' of Story, Marshall, Miller, Field, et al., under a new name, 'reasonableness.'"

It is the purpose of this restatement of the "due process" clause to make it clear that we adopt in our country the latest interpretation given to the clause by the Supreme Court of the United States. After this explanation, I trust that "reasonable," is inserted, making it dear that the law which deprives a person of his life, liberty, or property must be reasonable in its substantive and procedural character.

Even in the United States the greatest legal luminaries have found it necessary and convenient to draft a restatement of the laws, the country, having already produced the law of contracts, law of trusts, etc. The situation which gave rise to this monumental work of the American Law Institution is described by Elihu Root as follows:

"It was apparent that the confusion, the uncertainty, was growing worse from year to year. It was apparent that the past multitude of decisions which our practitioners were obliged to consult was reaching a magnitude which made it impossible in ordinary practice to consult them."

I respectfully submit that the Bill of Rights, more particularly the due process of law as expounded by the many courts of justice is badly in need of clarification. It is the duty and the great privilege of this Convention to clarify the Bill of Rights in a language palatable to the bench, the bar, and the people of the country.

With the wealth of experience that has piled up since the Magna Charta and the original Bill of Rights were written, we have abundant literature and great light on the subject. There is no reason why we should not take advantage of this wealth of literature and edification to restate a modern Bill of Rights, instead of perpetuating the old one articulated in words that no longer carry their original meaning words that, to say the least, will always constitute a mystery to our countrymen not familiar with the history of the English and the American constitutions.

I say that, with your cooperation, with the discussion which I hope will arise from the amendments we have proposed, we shall be able to rephrase the Bill of Rights, thereby offering to our people a Magna Charta under which they will always find protection, because they know its meaning—protection which shall not be left to the caprice of judges under cover of words that are mysterious and unintelligible to the people.

Notwithstanding the statement found in the preamble of the draft, we cannot approve a constitution that embodies our ideals if the Bill of Rights is not subjected to the rigid test of a thorough discussion in this Convention. Only by subjecting the different provisions of the proposed Bill of Rights to our constructive criticism and serious meditation, with due regard to the virtues and the defects of our people and the customs in this country, shall we succeed in insuring peace and order under a regime of liberty, justice, and equality, which are some of the avowed purposes of the draft of the Constitution.

Gentlemen, the spirit of the Constitution is found in the Bill of Rights. Paraphrasing Mr. Justice Brandeis, one of the greatest minds of the Supreme Court of the United States, we should recognize the significance of man's spiritual nature and seek to protect the people, their beliefs, their thought, their emotions, their sensations and thus usher conditions favorable to the pursuit of happiness. It is here hoped that this august Body will finally impart to our Constitution the Filipino spirit, the soul of our country.

MR. VINZONS: Mr. President, I was going to speak in favor of my amendment, but I think it is better to have somebody speak in my stead. I cede the right to...

THE PRESIDENT: The Gentleman cannot cede any right not granted by our rules.

MR. VINZONS: The rules grant three speakers, Mr. President.

THE PRESIDENT: Anybody can speak; that is provided for in our rules.

MR. VINZONS: If there is nobody interested to speak...

THE PRESIDENT: The Gentleman can speak if he wants to, but he cannot cede that right.

SR. ARANETA: Si no hay mas turnos en contra, como quiera que, de acuerdo con el Reglamento, el proponente de una enmienda tiene derecho a dirigir los turnos, yo desearia cerrar el debate.

EL PRESIDENTE: Cualquier Delegado puede hacer uso de la palabra.

SR. ARANETA: En el case de la mocion presentada por el Señor Romero, se sento la regla de que el proponente de una enmienda puede cerrar el debate.

EL PRESIDENTE: El Señor Romero tuvo que ceder a otro su turno.

MR. CINCO: Mr. President, I should like to pre-sent an amendment to the amendment.

THE PRESIDENT: What is the Gentleman's amendment to the amendment?

MR. CINCO: Mr. President, after the last word, "law" of the amendment, let the following phrase be added: "with the exception of cases of contempt punishable by law."

MR. VINZONS: Mr. President, I should like to ask the Gentleman to explain his amendment.

MR. CINCO: The purpose of my amendment to the amendment is just to meet the objection expressed here by the Chairman of the Committee on Bill of Rights when he said that the Legislature or any of its committees must have an inherent power to punish contempt committed in its proceedings.

EL PRESIDENTE: ¿Acepta el autor de la enmienda?

SR. ARANETA: Acepto su enmienda en la inteligencia de que si es rechazada, entonces yo insistire en la mia.

EL PRESIDENTE: Es su derecho, Su enmienda sera votada en el case de que la votacion sobre la enmienda a la enmienda sea desfavorable.

¿Puede votarse la enmienda a la enmienda? (Varios Delegados: Si.) Los que esten a favor de la enmienda a la enmienda, digan Si. (Una minoria: Si.) Los que esten en contra, digan No. (Una mayoria: No.) Rechazada.

MR. ABAYA: I have an amendment to the amendment of the Gentleman from Manila. Insert the words "imprisoned or" between the words "be" and "deprived", and strike out the words "nor imprisoned."

EL PRESIDENTE: ¿Que dice el autor de la enmienda original?

SR. ARANETA: Acepto la enmienda a la enmienda?

SR. PRESIDENTE: ¿Puede votarse la enmienda a la enmienda (Varios Delegados: Si) Los que esten a favor de la enmienda a la enmienda, digan Si. (Una minoria: Si.) Los que esten en contra, digan No. (Una mayoria: No.) Rechazada.

SR. LIM: Señor Presidente, deseo hacer uso de la palabra, en pro de la enmienda original.

EL PRESIDENTE: Tiene la palabra el Delegado por Manila.

DISCURSO DEL SR. LIM.

SR. LIM: Señor Presidente. Caballeros de la Convencion: Como muy bien ha dicho el Chairman del Comité sobre Declaracion de Derechos, es preciso, para la garantia de los derechos individuales, que haya previamente una declaracion judicial a ese efecto, y para probarlo nos ha citado una declaracion hecha por Daniel Webster en el famoso asunto del Dartmouth College. La enmienda del Delegado por Manila, tal como ha leído el los dos párrafos

que aparecen en esta relacion, solamente se refiere al derecho de un dividuo a la vida y a la libertad. En otras palabras, ninguna persona debe ser privada de su vida o puesta en prision, a nienos que sea por virtud de una decision de un tribunal de justicia. Esta disposicion, como ha dicho el Delegado por Manila, es una mera aclaracion de la frase "due process of law;" de ninguna manera coarta el verdadero significado del "due process of law," porque, de todas maneras, no tenemos ninguna ley que pueda pvivar de la libercad o tie la vida a una persona, a menos que sea por medio; de una orden de tribunal competente. Lo que queremos evitar es que el dia de mañana se pueda dar a la frase: "due process of law," la interpretacion de que se le puede privar de la vida a una persona sin una sentencia de tri-bunal competente. El Delegado por Batangas, Señor Laurel, menciono el hecho de que actualmente se celebras: vistas administrativas en relacion con asuntos gubernamentales, en las que no se requiere la intervencion judi-cial. En el segundo parrafo se sanciona eso, al establecer que "no public officer shall curtail in any way the liberties and rights of an individual nor deprive him of his property unless in conformity with the reasonable law and procedure." Este segundo parrafo sanciona el actual procedimiento de determinar cuestiones gubernamentales mediante procedimientos administrativos por virtud de una ley. No se pide que haya sentencia judicial. Asi es que, circunscribiendose esta enmienda a la privacion de la vida o de la libertad y que debe haber una sentencia judicial previa, sostenemos respetuosamente que debe ser aprobada la enmienda del Delgado por Manila.

SR. ARANETA: Señor Presidente, pido votacion nominal.

EL PRESIDENTE: Se va a votar la enmienda ori-ginal del Delegado por Manila. Se ha pedido que la vota-cion sea nominal. La Mesa desea ver si hay el numero reglamentario de Delegados que apoye la votacion no-minal. (Algunos Delegados se lavantan.) No habiendo el numero reglamentario de Delegados que apoyen la vo-tacion nominal, no ha lugar a la peticion del Delegado por Manila.

SR. ARANETA: Señor Presidente, creo que el Delegado por Negros Occidental desea hacer una aclaracion de la enmienda.

EL PRESIDENTE: Se va a votar la enmienda ori-ginal del Delegado por Manila. Los que esten a favor de la enmienda digan Si. (Varios Delegados: Si.) Los que esten en contra, digan no. (Varios Delegados: No.)

SR. ARANETA: Señor Presidente, pido la divi-sion.

EL PRESIDENTE: Se ha pedido la division. Los que esten a favor de la enmienda del Delegado por Manila, tengan la bondad de levantarse. (Se levantan 38 Dele-gados.) Los que esten en contra, sirvanse levantarse ahora. (Se levantan 70 Delegados.) Por 70 votos negativos, contra 38 afirmativos, se rechaza la enmienda.

Lease otra enmienda.

EL SECRETARIO:

"No law shall be enacted which unreasonably discri-minates against a class of persons."

SR. LIM: Señor Presidente, pido la palabra.

EL PRESIDENTE: Tiene la palabra el Delegado. por Manila.

MR. LIM: In the draft the provision reads as follows:

"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws "

MR. FLORES: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LIM: Willingly.

MR. FLORES: Is the amendment of the Gentle-man not included in the last part of Section 1, Article 23, which says, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws"?

MR. LIM: I have just stated that the interpretation given to this phrase "denied the equal protection of the laws" renders those laws unconstitutional. There are reasons which prove that such laws should be accorded by the courts of justice the proper merits.

MR. FLORES: Therefore, the Gentleman's amend-ment is unnecessary.

MR. LIM: We say that unless we strike from the Cons-titution this phrase "equal protection of the laws," such laws that I have mentioned will not be constitutional, like the law regarding the protection of pregnant women laborers in our industrial factories, and such women are under the equal protection of the laws. Our Supreme Court declared that they could not be accorded the protection that our Legislature wanted to give them. In other words, that law was a curtailment of the legislative power to grant protection

MR. CONFESOR: Mr. President, will the Gentle-man yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LIM: Willingly.

MR. CONFESOR: Suppose the Legislature enacts a law fixing a minimum wage for cigar-makers. What will be the effect if the amendment is approved? Will not the amendment prohibit the enactment of a mini-mum wage for a certain group of laborers?

MR. LIM: If the law prescribes a minimum wage for cigar-makers only, it may be declared unconstitu-tional for the reason that it is intended only for a cer-tain class of laborers and not all the laborers in gene-ral.

MR. CONFESOR: Will the amendment remedy the situation?

MR. LIM: The amendment proposed by Delegate Araneta will remedy that situation because of the phrase "unreasonable discrimination."

MR. BOCAR: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LIM: Willingly.

MR. BOCAR: I object to that word "unreasonable." Will the Gentleman please explain it? Under the amend-ment, is unreasonable discrimination anticipated?

MR. LIM: Yes.

MR. BOCAR: What, for example?

MR. LIM: I will cite to you a case that occurred in the United States. A law was approved whereby an establishment having more than five employees could not have aliens constituting more than 20 per cent of its employees. Such a law was declared unconstitu-tional by the Federal Supreme Court, indicating that it was unreasonable discrimination. But if we had the amendment of Delegate Araneta in our Constitution, we could

approve such a law in this jurisdiction because it would constitute reasonable discrimination between citizens and aliens.

MR. BOCAR: In other words, the amendment does not seek to do away with all kinds of discrimination.

MR. LIM: It does not. The Legislature is given more power than it actually has. The power is similar to that vested in the United States Congress.

MR. GUZMAN (AL.): Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LIM: Willingly.

MR. GUZMAN (AL.): Is it not true that what is intended by the proposed amendment is included in the last part of Section 1 of the Bill of Rights, which says: "No person shall be denied the equal protection of the laws"? Is it not a fact that the phraseology used by the Committee can be applied to individuals as well as to classes or groups of individuals, while the proposed amendment would apply only to a class of persons, but never to individuals?

MR. LIM: It refers also to individuals. When we talk of classes, we include individuals as units.

MR. GUZMAN (AL.): Would the Gentleman have any objection to drawing a line, so that the Convention might definitely know what is meant by the class of persons mentioned in the proposed amendment?

MR. LIM: I was referring to the case of pregnant women laborers. If we had the Araneta amendment approved by the Convention, we could approve a law in favor of pregnant women laborers in our industrial factories thus protecting a class of persons, pregnant women laborers, but as interpreted by our local Supreme Court in the case of Fumar, such a law was violative of the provision of equal protection of the laws.

MR. GUZMAN (AL.): But does not this phrase "equal protection of the laws" comprehend the proposed amendment? That is my question.

MR. LIM: It does not. As I said, a law was declared unconstitutional under the phrase,

THE PRESIDENT: The time of the Gentleman has expired.

MR. LAUREL: Mr. President and Gentlemen of the Convention: It will be inconceivable if we approve the amendment after having turned down the previous one, but I am not basing the reason of my objection on that ground. I simply desire to call most respectfully the attention of the Members of the Convention to the fact that the amendment provides that no law shall be enacted which unreasonably discriminates against a class of persons. If you read the draft as it is, you will find that no person shall be deprived of his life, liberty and property without due process of law, nor shall any person be denied by anybody, whether the Legislature or the Executive, that equal protection of the laws. Under the proposed amendment, only the Legislature may not discriminate, meaning that other departments may do so. I am sure that the "wish of the Members of this Convention is against it.

Now, as regards the case of Fumar decided by Justice Johnson with the concurrence of a number of justices here, Justice Romualdez, I think the citation is rather unfortunate, because, in my opinion, it has no application here. That involves the freedom of contract with respect to a certain law enacted by the Philippine Legislature providing that pregnant women laborers in different cigar factories be given thirty days vacation with pay before delivery and another thirty days after delivery. Now, there are two points touched by the Supreme Court in that case: First, that the law impaired the freedom of contract. That is to say, you cannot compel the owner of a cigar factory to enter into a certain contract under certain terms. And that is the principal basis of the Supreme Court in that case. Second, which was slightly touched upon by the Supreme Court, was the fact that the law deprived the

owner of a factory of his property without due process of law. Why? Because the basis of the law was the mere fact of pregnancy. If a woman working in a factory gets pregnant, why should we make the owner of the factory pay for her pregnancy when he is not the author of the pregnancy? That is the reason.

MR. CONFESOR: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LAUREL: With pleasure.

MR. CONFESOR: Suppose a law should be enacted to the effect that pregnant women working in factories, or women factory workers becoming pregnant legitimately, be paid three or two months' salary after delivery. Would that law be constitutional under the pre-sent draft submitted by the Committee?

MR. LAUREL: I was, Mr. President, going to that point. In this connection, I want to say that one criticism against the Bill of Rights, especially by one of our distinguished political scientists, Dean Maximo Kalaw, is that we adhere to the necessities of natural law when, as a matter of fact, we should give proper consideration to social justice and to the other rights of the State.

I want to say, however, that in preparing the draft we took care of that social-justice part of the Constitution by providing in Sections 9 and 10, Article 13, that it shall be the duty of the Legislature to give special attention to labor problems, child labor, labor and capital, landlords and tenants. We are socializing and nationalizing many things. Under the Constitution, under the specific provision we are dealing with now, that decision of the Supreme Court can no longer stand in view of the collateral provisions. Under the draft of the Constitution, it will be perfectly proper, even under due process of law and equal protection of the laws, for the Legislature to enact legislation calculated to protect the interest of the laborers and solve the problems involving lands and tenancy and the like. And it will be necessary in that case to make reference to equal protection of the laws—first, on the ground that there are other provisions incorporated in our Constitution, and, second, it might be properly upheld under the broad doctrine of the police power of the State.

MR. PEREZ (J.): Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. LAUREL: Most gladly.

MR. PEREZ (J.): Would a law prohibiting employment of aliens in any factory or establishment be valid under the clause "No person shall be deprived of the equal protection of the laws"?

MR. LAUREL: That might be also a subject of legislation.

Now, there are certain fundamental rights. The Gentleman will observe that the law refers to persons—no person shall be deprived of his life, liberty and property. But the right to life, liberty and property and other rights are not exclusively for our citizens. As I have stated, not only the rights of our citizens but also those of the foreigners are protected.

Of course, in the draft, we are discriminating on a certain fundamental question against foreigners, and we are not doing that for the first time. Foreigners cannot vote, because they lack political attachment. We discriminate against them, even without that provision in this law. Foreigners cannot own or purchase public land; so that, in point of fact, we are discriminating against them in the exercise of political and civil rights.

Nobody has raised a question as regards the constitutionality of such a provision adopted here or by our Legislature. And right here, as I have said, we provide for the conservation of our natural resources as one of the

fundamental philosophies of the draft of the Constitution.

MR. PEREZ (J.): The Gentleman, I think has stated that there is no jurisdiction on this subject. Has he not gone over Case 116, Pacific, 1037 Blake vs. Mclung, 172 U. S., 237; Sully vs. American National Bank, 178, U. S., 287. decided by the Supreme Court of the United States which held that such a law would not be constitutional because it would be a violation of the provision that no person shall be denied the equal protection of the laws? If we incorporate that in the Constitution, our Legislature cannot pass a law prohibiting the employment of aliens in factories or establishments.

MR. LAUREL: It will be a matter of interpretation. I suppose, Mr. President, we will not be necessarily bound by the decisions of the state courts. And even if the provision is somewhat vague, the courts will be guided by the national policy outlined and given by the Legislature. They cannot by judicial statements, I mean to say, our courts are not supposed to interpret the law blindly. They are supposed to be necessarily guided by the philosophy of the Constitution which we adopt, and the Legislature will, it is expected, enact laws in harmony with the tendency of the fundamental law.

MR. PEREZ (J.): I understand the Gentleman as speaking of specific cases involving the interpretation of the law?

MR. LAUREL: If it is necessary, in the interest of social justice, for the protection of our citizens, I don't see any reason why our country may not interpret this provision of the Constitution, even if the Legislature should discriminate against foreigners in line with the broad policy of our draft.

MR. PEREZ (J.): Does the Gentleman mean to say that in so interpreting the laws which we have borrowed from the American Constitution we may destroy the jurisprudence of the United States in cases of the nature referred to?

MR. LAUREL: Our Constitution may not only destroy but lay down doctrines which are adopted to the needs, tradition and idiosyncracies of our people. Notwithstanding the fact that we have borrowed provisions from the United States, we are not bound necessarily by the American interpretation of such provisions because they cannot be adapted to the changing conditions of human affairs.

MR. PEREZ (J.): I would like to clarify one point. Suppose we change the word "person" to the word "citizen," so that the Legislature will enact a law discriminating against aliens?

MR. LAUREL: I think it is better to leave the provision in the draft as it is, to the effect that no person may be denied the equal protection of the laws.

MR. SANTOS: For an information. Does the Gentleman believe that the provision will not be an obstacle to labor legislation or such laws intended for the protection of labor?

MR. LAUREL: It will not. The Gentleman from Nueva Ecija will observe that the first paragraph is a general provision, and under it we may suppress many other provisions. For instance, we refer in this draft to poverty, which should not be a ground for denying free access to the courts. Broadly speaking, the phrase "equal protection of the laws" means that everybody, from the highest to the lowest officer, is given the necessary protection. Therefore, by implication, everyone may have the freedom to go to court. And as Mr. Justice Moreland himself said in one case, the higher the official, the more he is bound by the supremacy and the majesty of the law.

MR. VINZONS: Mr. President, may I now speak in favor of the amendment?

THE PRESIDENT: Yes.

MR. VINZONS: Mr. President, if I speak now in favor of the Araneta amendment, it is because I am prompted by a desire to inform the Members of this eminent Constitutional Assembly that, while the Bill of Rights should be considered as sacred and immutable, we should at the same time observe that under the best considered authority on constitutional law, there is a move to change the Bill of Rights even in the United States.

Before I proceed, Mr. President, I would like to say this—that I have presented a precept similar to that in the draft of the Constitution. As a Member of the Committee on Bill of Rights, I sustained the inclusion of that provision in the draft. Mr. President, having been under the careful tutelage of the Gentleman from Batangas, I am imbued with his ideas on constitutional law and whatever opinion I have at present is the re-sult of careful training. If there is any part in the Constitution that should be held less susceptible of amendment, it is the Bill of Rights. There is no other part in the Constitution that has found consecration from time immemorial than the provision embodied in Article III, the Bill of Rights. But when I speak here in favor of the Araneta amendment regarding the equal protection of the laws, I simply desire, Mr. President, to call the attention of the Convention to the vast jurisprudence with respect to the changing in-terpretation given to the original provision by the Consti-tution of the United States and by the courts of these islands.

It has been held, Mr. President, that the phrase “No man shall be denied the equal protection of the laws” is the bulwark capitalism which has prevented muck social legislation favorable to labor and to maternity. We may cite here endless lists of the deci-sions of the United States Supreme Court from the time of Marshall up to the time of Justice Holmes, two emi-nent justices who always sustained the theory that so-cial legislation must be held paramount over the provi-sions of the Constitution regarding the equal protection of the laws. But, at the same time, we should observe that the inclusion of the provision in the Constitution does not serve to repudiate the theory; in fact, it serves to make it clear and definite.

The original provision says: “No person shall be deprived of the equal protection of the laws.” The Gentleman from Batangas is largely right in saying that this phrase does not apply only to the Legislature but also to the Executive and the Judicial Departments of the Government. But we contend that there is no ne-cessity of presenting an amendment in order to bind the other departments of the Government, except the Legislature, by the mandate of the equal protection of the laws, for the only duty we have is to put into effect the laws passed by the Legislature. The object of this, as intended by the original framers and as it must have been understood by King John, was to limit the power of the king in order that the rights of individuals might not be deprived by the passage of laws that would dis-criminate against them.

But the progress and advancement of the nations of the world has changed to a great extent our theory of equal protection of the laws. In some States of the United States, laws have been enacted which discriminate against capital. Labor legislation has been passed in most advanced nations of the civilized world—legislation which affords protection to labor and to the individual as against the class. There is at present, Mr. President, a clash of rights between individuals and groups in society, a clash which may lead, in countries like Russia, to a bloody revolution. Such a problem does not exist in the United States where it can be peacefully settled through legislation. In the Philippines, the highest tribunal has decided a case by declaring unconstitutional a law giving protection to maternity on the sole ground that it denied the equal protection of the laws not to individuals but to powerful corporations.

The progress in the economic life of a nation is but a distinct classification between the so-called proletariat and bourgeois. Soviet Russia has, in fact, abolished the Bill of Rights and substituted socialistic principles. The United States, preserving its equanimity, has seen a middleground by which individual rights are protected and at the same time classes or social groups are legis-lated against. We find that the so-called class struggles may be the cause of much bloodshed not only in the Philippines but in other countries where progressive ideas have not been

adopted. While I believe that the Constitution should not leave to the courts the interpretation of its provisions in order to suit them to circumstances and the times, the presence of the provision in question will not in any way hamper the proper exercise of the courts in giving equal protection to every individual. How can we conceive of an instance, Mr. President, where a Department Secretary will deny a person the equal protection of the laws just because the Bill of Rights provides that no law which discriminates against a class of people shall be enacted? May I say, Mr. President, that the equal protection of the laws for the individual is inherent in every government? It is not given by the State to the citizen. It is inherent in the citizen himself. It exists even without a provision in the Constitution, and if we eliminate it in the Bill of Rights, the individual cannot still be deprived of the equal protection of the laws.

At the same time, the Bill of Rights does not contain a provision for social legislation by which the Legislature may reasonably discriminate against a class or a group. With the provision, a poor, humble citizen may not be taxed more than any other citizen because of the uniform law of taxation. With this provision for the equal protection of the laws, a person may not be deprived of his right because a Department Secretary for instances, will argue that he has the right to discriminate in the absence of a constitutional provision. On the other hand, Mr. President, the absence of a provision, such as this proposed by Delegate Araneta which authorizes a reasonable discrimination not against individuals but against a group of individuals, will hamper if not entirely frustrate much of the needed legislation in this country. We are at present embarking on a new independent life. We are all aware that the problems of the future will no longer be the highest ideal of struggle of a dependent people against a sovereign power. The struggle, Mr. President, will be of a Filipino against fellow citizen, an individual against a group of individuals, the proletariat against the bourgeois, labor against capital. We should visualize and have a broader view of the future if we want the Government we are establishing to be stable and permanent. If we want the Constitution we are now drafting to be enduring, lasting for all eternity.

THE PRESIDENT: The time of the Gentleman has expired.

MR. VINZONS: If the Convention will please concede me a few more minutes to continue...

EL PRESIDENTE: Los que esten conformes con la peticion del Delegado por Camarines Norte, tengan la bondad de decir Si. (Una minoria: Si.) Los que esten en contra, sirvanse decir no. (Una mayoria: No.) No ha lugar a la peticion.

MR. VINZONS: I wish to give my thanks to the Members of this Convention for denying me the privilege of continuing my speech.

EL SR. ARANETA RAZONA SU ENMIENDA

SR. ARANETA: Señor Presidente y Caballeros de la Convencion: Soy el primero en comprender la impaciencia de esta Convencion para tener cuanto antes una Constitucion aprobada; sin embargo yo quisiera que me oigais nada mas que por unos diez minutos para exponer mis puntos de vista sobre esta cuestion muy fundamental, a mi juicio. Señores, concebí esta enmienda despues de haberme dedicado por algunos meses a la lectura de un libro que contiene las famosas disidencias del Magistrado Holmes. En este libro encuentre muchas decisiones en las que dicho magistrado registro su vigorosa disideneia. Me limitare a poner en vuestro conocimiento tres de sus famosas didencias.

Una es del caso de Gilbert en el que disentia de la decision del Tribunal Supremo Federal al declarar anti-constitucional una ley que gravaba las donaciones que se hicieran durante los ultimos cinco años antes de haber fallecido el donante y no imponia impuesto a las donaciones que se hubiesen hecho antes de esos cinco años, ¿Por que se declaro anticonstitucional? Porque negaba igual proteccion de la ley a los que habian recibido

do-naciones seis años antes de morir el donante.

Otro caso es el de Lusbill en el que tambien la Corte Suprema Federal declaro anticonstitutional una ley que imponia un impuesto a las hipotecas que vencian en cinco años. Se declaro anticonstitucional, porque el impuesto no se extendia a hipotecas que vencieran despues de cinco años. Tambien se dijo que se negaba igual proteccion ante la ley.

El ultimo caso se refiere al asunto contra Pennsylvania, en el que se declare anticonstitucional una ley que imponia un impuesto a companies de servicio publico pero no a las personans que se dedicaban a servicios de utilidad publica, y la Corte Suprema declaro que era anticonstilucional, porque negaba igual proteccion ante la ley. Todos los que quieren negar a la Corte Suprema el derecho de enmendar la plana a la Legislatura deben pensar muy en serio en este principio constitucional de igual proteccion ante la ley.

Señor Presidente, despues de leer estas famosas disidencias, estuve cavllando sobre como podriamos imprimir un nuevo giro a esta cuestion.

SR. ORTIZ: Para algunas preguntas al orador, Señor Presidente.

EL PRESIDENTE: ¿Esta dispuesto el orador a contestar?

SR. ARANETA: Quisiera antes terminar, porque no tengo mas que quince minutos; si despues de termi-nar, la Convencion me da un pcco mas de tiempo, tendre muchisimo gusto en contestar a sus preguntas.

(Prosiguiendo.) Estuve cavilando, repito, sobre como podriamos imprimir un nuevo giro a este estado de cosas, y al Comitè propuse una enmienda que no fue aceptada; despues, yo mismo no estaba del todo convencido de que aquella enmienda expresaba bien el pensamiento que yo tenia. Y despues de un maduro estudio, he creido conveniente someter a vuestra consideracion esta enmienda que dice lo siguiente: "Ninguna ley se dictara que irrazonablemente discrimine contra una clase de personas." Algunos preguntarian por que se ha a adido la palabra "irrazonablemente" y contesto que es para ensanchar mas la discrecion de la Legislatura.

Señor Presidente: el Delegado Lim ya dijo aqui la razon de ser de esta disposicion de "igual proteccion ante la ley;" El unico proposito al principio era proteger a los negros, pero, los tribunales, haciendo uso de su "judicial statemanship," ensancharon el concepto de es-tas palabras, al extreme a que han llegado las tres decisiones que he mencionado.

Yo como el que mas quiero proteger la propiedad, pero al mismo tiempo soy amante de un liberalismo a tono con las circunstancias modernas. Muchas de estas leyes que el Tribunal Supremo ha declarado anticonstitucionales son de la clase de medidas de urgencia con las cuales se ha querido dar mayor facultad al Presidente de los Estados Unidos. Hubo un tiempo en que se declararon anticonstitucionales varias leyes del Congreso de Estados Unidos porque el Tribunal Supremo Federal trato de atajar el progreso de las nuevas ideas que se desarrollaban en el Capitolio.

Señor Presidente: Voy a terminar, pero antes quiero demostrar lo anticuado de estas palabras y recordarles que las Constituciones modernas tienen preceptos enteramente contrarios a esto que estoy discutiendo. La Constitucion de Alemania dice que el trabajo recibira especial proteccion de la ley. La de otros paises dice que la maternidad recibira especial proteccion de la ley. No es posible decir absolutamente que toda persona tiene derecho a igual proteccion ante la ley; el pobre necesita mayor proteccion de la ley y, por esta razon, pido que se descarts de este proyecto de Constitucion este anacronismo, "igual proteccion ante la ley," y en su lugar se ponga un precepto que este mas a tono con los tiempos.

He dicho.

EL PRESIDENTE: ¿Puede votarse la enmienda?

SR. LIM: Pido que la votacion sea nominal.

EL PRESIDENTE: ¿Hay una cuarta parte de la Convencion que apoye la mocion? (Varias voces: si.)

Los que esten conformes con la mocion tengan la bondad de ponerse de pie. (Veintiocho Delegados se levantan.) No hay una cuarta parte de los Delegados presentes que apoyen la mocion y, por tanto, queda denegada.

SR. LIM: Pedimos que se cuente otra vez el numero de los que se han levantado.

EL PRESIDENTE: Acaba de contarlos el Secretario. No hay el numero reglamentario que apoye la votacion nominal.

RECHAZAMIENTO DE LA ENMIENDA ARANETA

EL PRESIDENTE: Ahora se va a votar la enmienda Araneta. Los que esten conformes con dicha enmienda. que digan si. (Varios Delegados: Si.) Los que no lo esten que digan no. (Varios Delegados: No.) (Varias voces: Division.)

Los que esten conformes con la enmienda Araneta, que se pongan de pie. (48 Delegados se levantan.) Los que no lo esten que se pongan tambien de pie. (70 Dele-gados se levantan.)

Por 70 votos negativos contra 48 afirmativos, se rechaza la enmienda.

Lease otra enmienda.

EL SECRETARIO:

By Delegate Cabarroguis: Page 3, before the word "private," insert the words: "unless freely given, donated, or otherwise ceded by the owner."

EL PRESIDENTE: ¿Que dice el autor?

MR. CABARROGUIS: Mr. President, I withdraw my amendment.

EL PRESIDENTE: El autor de la enmienda la retira.

Lease otra enmienda.

EL SECRETARIO: del Delegado Diez:

Pagina 3.A, linea 6, entre las palabras "privada" y "para" insertese la palabra "sino" en la linea 7, y sustituyase la palabra "sin" por "y previa."

SR. ORENSE: Señor Presidente, para un enmienda a la enmienda.

EL PRESIDENTE: Esta enmienda sera referida al Comité de Estilo.

SR. ORENSE: Si me permite la Mesa, voy a proponer mi enmienda, que es como sigue: "No se expropiara la propiedad privada para fines de necesidad y utilidad publica sin previa y justa indemnizacion." Las palabras que yo introduzco necesidad" y "utilidad" no son de estilo, y si me permite la Mesa voy a decir dos palabra sobre las mismas.

EL PRESIDENTE: Hay muchas enmiendas de esa naturaleza y una de ellas es la del Delegado Nepomuceno.

SR. NEPOMUCENO: Pido que mi enmienda, igual que las otras semejantes, sean referidas al Comité de Estilo.

EL PRESIDENTE: Estas enmiendas se envieran al Comité de Estilo.

SR. ORENSE: Yo quisiera antes explicar a la Asamblea la naturaleza y los fundamentos de mi enmienda para que pueda determinar si debe ser enviada al Comité de Estilo o debe ser resuelta aquí.

EL PRESIDENTE: La Mesa cree que los Señores Delegados tienen copia de esas enmiendas y, por tanto, las someterá a la Asamblea para que decida si deben ser o no enviados al Comité de Estilo.

MR. PEREZ (J.). Mr. President, I think the Assembly is not very well informed of the nature of the amendment. Would the Chair allow me to say a few words in order to explain it?

THE PRESIDENT: The Assembly will decide. Each and every Member has read the amendment and will state whether the amendment should be sent to the Committee on Style.

SR. ORENSE: Entonces Señor Presidente, voy a consumir un turno en contra de la moción de que vaya al Comité de Estilo mi enmienda a la enmienda.

EL PRESIDENTE: No es ninguna moción. Es una sugestión que hace la Mesa a la Asamblea.

MR. BUSLON: Mr. President, even if an amendment is judged by the Convention as one which should be in-dorsed to the Committee on Style, is not the author privileged to defend it?

THE PRESIDENT: It is supposed that the Assembly can distinguish very well whether the amendment should be sent to the Committee on Style or be discussed on the floor.

MR. BUSLON: We would like to request the Chair's opinion before sending the amendment to the Committee on Style.

THE PRESIDENT: The Chair will ask the Assembly whether or not to send the amendment to the Committee on Style.

MR. INTING: I would like to bring to the attention of the Chair that the amendments submitted by Delegates Diez, Nepomuceno, Buslon, Inting, Ribo, Mumar, Perez, and Bañaga, are of the same nature.

THE PRESIDENT: Yes. What does the Gentleman want?

MR. INTING: We would like to request the Chair that all these amendments be taken up together.

EL PRESIDENTE: La Mesa va a consultar a la Asamblea sobre si las enmiendas de los Delegados Diez, Nepomuceno, (R.), Buslon, Inting, Ribo, Perez (J.) y Binag deben enviarse al Comité de Estilo o no.

MR. BUSLON: Before the question is submitted to the Convention, Mr. President, I would like to say a few words.

THE PRESIDENT: The Chair has already ruled that there can be no debate on the question.

MR. BUSLON: But, Mr. President, I wonder if the Delegates in this Convention, simply because the majority of us here are impatient, should be deprived of their right to defend what they think should be in the Constitution.

THE PRESIDENT. The Chair has already ruled that the Assembly should decide on this matter without any debate at all.

MR. BUSLON. May I say a few words? I sustain that before a man is judged he should be heard.

THE PRESIDENT. The Gentleman may appeal against the decision of the Chair if he wishes,

SR. OZAMIS: Para una informacion, Señor Presidente, ¿Se va a entender que el informe que rinda el Comité de Estilo sera final?

EL PRESIDENTE: Su Señoría debe haber leído el reglamento de la Asamblea que dice que se sometera a la Asamblea. Se le concede la palabra al proponente de la enmienda.

Se va a votar la cuestion de si deben o no enviarse estas enmiendas al Comité de Estilo. Los que esten a favor de que se envíen estas enmiendas al Comité de Estilo, digan si. (Varios Delegados: Si.) Los que esten en contra digan no. (Varios Delegados: No.) Division. Los que esten a favor, que se levanten. (Se levantan 54 Delegados) Los que esten en contra, que se levanten ahora. (Se levantan 56 Delegados.) Por 56 votos negativos contra 54 afirmativos la Asamblea decide que se discutan aquí estas enmiendas.

SR. ARANETA: Señor Presidente, quisiera explicar mi voto. He votado en contra de que se envíe esto al Comité de Estilo, porque si bien es verdad que muchas de estas enmiendas son de estilo, en cambio hay una. por lo menos, la del Delegado Perez (J.) . . .

EL PRESIDENTE: La Asamblea ha decidido que todas estas enmiendas no son de estilo y deben discutirse aquí.

SR. ARANETA: Señor Presidente, al registrarse mi voto, la Asamblea no se habia dado cuenta . . .

SR. RAMOS: Señor Presidente, el Delegado por Manila esta fuera de orden, en vista de que la Asamblea ha resuelto ya la cuestion que el suscita.

EL PRESIDENTE: Se sostiene la cuestion de orden. Lease la enmienda del Delegado Diez.

EL SECRETARIO:

Entre las palabras "privada" y "para" insertese la palabra "sino," en la linea 7, sustituyase la palabra "sin" por "y previa".

SR. NEPUMUCENO (R.): Señor Presidente, pido que se lea ahora todo el parrafo tal como queda enmendado con la enmienda del Delegado por Surigao.

EL PRESIDENTE: Lease.

(El Secretario lo lee.)

MR. CINCO. Mr. President, just for one information. I would like to know whether this amendment is acceptable to the Comité de Ponencia.

EL PRESIDENTE: ¿Que dice el Comité de Ponencia?

SR. SOTTO (F): El Comité no acepta la enmienda.

SR. ORTIZ: Señor Presidente, para una enmienda a la enmienda. Mi enmienda a la enmienda es que se diga "previously assessed and

SR. DIEZ: Señor Presidente, no puedo aceptar la enmienda a la enmienda por las razones que mas tarde expondre.

Señor Presidente, yo quisiera que mi enmienda se considere juntamente con las de identica naturaleza, que tienden a establecer como imperativo y obligatorio el que antes de que una propiedad privada sea expropiada, o que se le desposea al propietario de la finca que se trata de expropiar, se le pague la justa indemnizacion o el valor de la finca.

EL PRESIDENTE: La Mesa llama la atencion de la

Asamblea a que, no obstante su decision, todas estas enmiendas estan bajo su consideracion. Lease la enmienda del Delegado por Manila, Señor Araneta, para que la Asamblea vea si, discutiendo esta enmienda, pueden quedar consideradas implicitamente las demas enmiendas.

EL SECRETARIO:

By Delegate Araneta and others:

Page 3, lines 6 and 7, strike out the paragraph constituting said lines and insert in lieu thereof the following:

"Private property shall not be taken for public use, good, safety or welfare without just compensation having first been made to or paid in court for the owner.

"In case of dispute as to what just compensation is, the same shall be determined by a court of justice."

EL PRESIDENTE: ¿Desea la Asamblea que se sigan discutiendo una por una todas estas enmienda?

SR. ARANETA: Señor Presidente, podriamos discutir estas enmiendas conjuntamente, pero a condiCion de que se aumenten los turnos.

EL PRESIDENTE: Entonces, no habremos ganado nada: ¿podemos discutir una por una las enmiendas?

SR. ARANETA: No tengo inconveniente, con tal que se me de un turno.

EL PRESIDENTE: Su Señoria puede hablar.

SR. ARANETA: Si, pero como son cuatro, cinco o seis los prononentos de la enmienda...

EL PRESIDENTE: Estamos discutiendo la enmien-da del Delegado Diez.

SR. PERFECTO: Señor Presidente, leyendo las enmiendas de los DeJegados Diez, Buslon, Inting, Ribo, Mumar, Perez, (J) y Binag, encuentro que la tendencia capital de todas ellas es exigir la compensacion previa a la expropiacion, por consiguiente, propongo que todas estas enmiendas se discutan conjuntamente; es decir, que se consoliden estas enmiendas en una sola.

EL PRESIDENTE: No se puede, porque estan fraseadas de distintas maneras, y, por eso la Mesa propone que se enviasen al Comite de Estilo, a menos que los autores convengan en presentar una sola enmienda reformando la fraseologia.

SR. ORENSE: Señor Presidente, tengo una enmienda a la enmienda, en el sentido de que se incluyan las mencionas palabras "necesidad" y utilidad publica, que son dos conceptos diferentes. No se si en ingles no es asi; pero en castellano debe decirse las dos cosas; "Necesidad y utili. dad."

SR. RAFOLS: Señor Presidente, pido que se suspenda in sesion por dos minutos, para que puedan reunirse los autores de esas enmiendas y convenir en presentar una sola.

MR. GRAGEDA. It is very clear that the principle involved in the amendment is only one, and that is the requisite of previous compensation. Mr. President, why not approve the amendment in principle, and then leave the rest to the Committee on Style?

SR. OZAMIS: Señor Presidente, propongo una enmienda a la mocion del Delegado por Cebu, Señor Rafols, en el sentido de que en vez de suspender se levante la sesion, suplicando a los autores de estas enmiendas que se reúnan o procuren reunirse con el fin de llegar a una inteligencia y presentar solamente una enmienda refundida, para

considerarla mañana como asunto preferente.

MR. BUSLON: I second the motion.

EL PRESIDENTE: ¿Cuales son esas enmiendas?

SR. OZAMIS: Todas las enmiendas referentes a este parrafo del "Bill of Rights."

SR. RAFOLS: Acepto la enmienda del Delegado por Misamis a mi mocion.

EL PRESIDENTE: Se ha presentado la mocion de que los autores de las enmiendas en la parte del "Bill of Rights" correspondiente a las lineas 6 v 7, convengan en una sola eenmienda y la presenten mañana para la consideracion de la Asamblea. ¿Hay alguna objecion a esta mocion? (Silencio.) La Mesa no oye ninguna. Aprobada.

LEVANTAMIENTO DE LA SESION

EL PRESIDENTE: Se levanta la sesion hasta ma-ñana a las 3:00 p. m.

Eran las 7:25 p. m.

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