

ALEJO MABANAG ET AL., PETITIONERS, VS. JOSE LOPEZ VITO ET AL., RESPONDENTS.*G.R. No. L-1123. March 05, 1947*

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for prohibition to prevent the enforcement of a congressional resolution designated "Resolution of both houses proposing an amendment to the Constitution of the Philippines to be appended as an ordinance thereto." The members of the Commission on Elections, the Treasurer of the Philippines, the Auditor General, and the Director of the Bureau of Printing are made defendants, and the petitioners are eight senators, seventeen representatives, and the presidents of the Democratic Alliance, the Popular Front and the Philippine Youth Party. The validity of the above-mentioned resolution is attacked as contrary to the Constitution.

The case was heard on the pleadings and stipulation of facts. In our view of the case it is unnecessary to go into the facts at length. We will mention only the facts essential for the proper understanding of the issues. For this purpose it suffices to say that three of the plaintiff senators and eight of the plaintiff representatives had been proclaimed by a majority vote of the Commission on Elections as having been elected senators and representatives in the elections held on April 23, 1946. The three senators were suspended by the Senate shortly after the opening of the first session of Congress following the elections, on account of alleged irregularities in their election. The eight representatives since their election had not been allowed to sit in the lower House, except to take part in the election of the Speaker, for the same reason, although they had not been formally suspended. A resolution for their suspension had been introduced in the House of Representatives, but that resolution had not been acted upon definitely by the House when the present petition was filed.

As a consequence these three senators and eight representatives did not take part in the passage of the questioned resolution, nor was their membership reckoned within the computation of the necessary three-fourths vote which is required in proposing an amendment to the Constitution. If these members of Congress had been counted, the affirmative votes in favor of the proposed amendment would have been short of the necessary three-fourths vote in either branch of Congress.

At the threshold we are met with the question of the jurisdiction of this Court. The respondents deny that this Court has jurisdiction, relying on the collusiveness on the courts of an enrolled bill or resolution. There is some merit in the petitioners' contention that this is confusing jurisdiction, which is a matter of substantive law, with conclusiveness of an enactment or resolution, which is a matter of evidence and practice. This objection, however, is purely academic. Whatever distinction there is in the juridical sense between the two concepts, in practice and in their operation they boil down to the same thing. Basically the two notions are synonymous in that both are founded on the regard which the judiciary accords a co-equal, coordinate, and independent departments of the Government. If a political question conclusively binds the judges out of respect to the political departments, a duly certified law or resolution also binds the judges under the "enrolled bill rule" born of that respect.

It is a doctrine too well established to need citation of authorities, that political questions are not within the province of the judiciary, except to the extent that power to deal with such questions has been conferred upon the courts by express constitutional or statutory provision. (16 C. J. S., 431.) This doctrine is predicated on the principle of the separation of powers, a principle also too well known to require elucidation or citation of authorities. The difficulty lies in determining what matters fall within the meaning of political question. The term is not susceptible of exact definition, and precedents and authorities are not always in full harmony as to the scope of the restrictions, on this ground, on the courts to meddle with the actions of the political departments of the government.

But there is one case approaching this in its circumstances: *Coleman vs. Miller*, a relatively recent decision of the United States Supreme Court reported and annotated in 122 A. L. R., 695. That case, by a majority decision delivered by Mr. Chief Justice Hughes, is authority for the conclusion that the efficacy of ratification by state legislature of a proposed amendment to the Federal Constitution is a political question and hence not justiciable. The Court further held that the decision by Congress, in its control of the Secretary of State, of the questions of whether an amendment has been adopted within a reasonable time from the date of submission to the state legislature, is not subject to review by the court.

If ratification of an amendment is a political question, a proposal which leads to ratification has to be a political question. The two steps complement each other in a scheme intended to achieve a single objective. It is to be noted that the amendatory process as provided in section 1 of Article XV of the Philippine Constitution "consists of (only) two distinct parts: proposal and ratification." There is no logic in attaching political character to one and withholding that character from the other. Proposal to amend the Constitution is a highly political function performed by the "Congress in its sovereign legislative capacity and committed to its charge by the Constitution itself. The exercise of this power is even independent of any intervention by the Chief Executive. If on grounds of expediency scrupulous attention of the judiciary be needed to safeguard public interest, there is less reason for judicial inquiry into the validity of a proposal than into that of a ratification. As the Mississippi Supreme Court has once said:

"There is nothing in the nature of the submission which should cause the free exercise of it to be obstructed, or that could render it dangerous to the stability of the government; because the measure derives all its vital force from the action of the people at the ballot box, and there can never be danger in submitting in an established form, to a free people, the proposition whether they will change their fundamental law. The means provided for the exercise of their sovereign right of changing their constitution should receive such a construction as not to trammel the exercise of the right. Difficulties and embarrassments in its exercise are in derogation of the right of free government, which is inherent in the people; and the best security against tumult and revolution is the free and unobstructed privilege to the people of the State to change their constitution in the mode prescribed by the instrument." (*Green vs. Weller*, 32 Miss., 650; note, 10 L. R. A., N. S., 150.)

Mr. Justice Black, in a concurring opinion joined in by Justices Roberts, Frankfurter and Douglas, in *Miller vs. Coleman*, *supra*, finds no basis for discriminating between proposal and ratification. From his forceful opinion we quote the following paragraphs:

"The Constitution grant Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by a 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens

and subjects of * * * government' Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn assurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation. To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

"The State court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of a 'reasonable time' within which Congress may accept ratification; as to whether duly authorized State officials have proceeded properly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were intrusted by the Constitution solely to the political branch of government.

"The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in *Dillon vs. Gloss*, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time.' Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article 5 of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State, whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed. No such division between the political and judicial branches of the government is made by Article 5 which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point."

Mr. Justice Frankfurter, in another concurring opinion to which the other three justices subscribed, arrives at the same conclusion. Though his thesis was the petitioner's lack of standing in court—a point which not having been raised by the parties herein we will not decide—his reasoning inevitably extends to a consideration of the nature of the legislative proceeding the legality of which the petitioners in that case assailed. From a different angle he sees the matter as political, saying:

"The right of the Kansas senators to be here is rested on recognition by *Leser vs. Garnett*, 258 U. S., 130; 66 Law. ed., 505; 42 S. Ct., 217, of a voter's right to protect his franchise. The historic source of this doctrine and the reasons for it were explained in *Nixon vs. Herndon*, 273 U. S., 536, 540; 71 Law. ed., 759, 761; 47 S. Ct., 446. That was an action for \$5,000 damages against the Judges of Elections for refusing to permit the plaintiff to vote at a primary election in Texas. In disposing of the objection that the plaintiff had no cause of action because the subject matter of the suit was political, Mr. Justice Holmes thus spoke for the Court: 'Of course the petition concerns political action, but it alleges and seeks to recover for private damage. That private damage may be caused by such political action and may be recovered for in a suit at law hardly has been doubted for over two hundred years, since *Ashby vs. White*, 2 Ld. Raym., 938; 92 Eng. Reprint, 126; 1 Eng. Rul. Cas., 521; 3 Ld. Raym., 320; 92 Eng. Reprint, 710, and has been recognized by this Court.' 'Private damage' is the clue to the famous ruling in *Ashby vs. White*, supra, and determines its scope as well as that of cases in this Court of which it is the justification. The judgment of Lord Holt is permeated with the conception that a voter's franchise is a personal right, assessable in money damages, of which the exact amount 'is peculiarly appropriate for the determination of a jury,' see *Wiley vs. Sinkler*, 179 U. S., 58, 65; 45 Law. ed., 84, 88; 21 S.

Ct., 17, and for which there is no remedy outside the law courts. 'Although this matter relates to the parliament,' said Lord Holt, 'yet it is an injury precedaneous to the parliament, as my Lord Hale said in the case of *Bernardiston vs. Some*, 2 Lev., 114, 116; 83 Eng. Reprint, 475. The parliament cannot judge of this injury, nor give damage to the plaintiff for it: they cannot make him a recompense.' (2 Ld. Raym., 938, 958; 92 Eng. Reprint, 126; 1 Eng. Rul. Cas., 521.)

"The reasoning of *Ashby vs. White* and the practice which has followed it leave intra-parliamentary controversies to parliaments and outside the scrutiny of law courts. The procedures for voting in legislative assemblies—who are members, how and when they should vote, what is the requisite number of votes for different phases of legislative activity, what votes were cast and how they were counted—surely are matters that not merely concern political action but are of the very essence of political action, if 'political' has any connotation at all. *Marshall Field & Co. vs. Clark*, 143 U. S., 649, 670, et seq.; 36 Law. ed., 294, 302; 12 S. Ct., 495; *Leser vs. Garnett*, 258 U. S., 130, 137; 66 Law. ed., 505, 511; 42 S. Ct., 217. In no sense are they matters of 'private damage.' They pertain to legislators not as individuals but as political representatives executing the legislative process. To open the law courts to such controversies is to have courts sit in judgment on the manifold disputes engendered by procedures for voting in legislative assemblies. If the doctrine of *Ashby vs. White* vindicating the private rights of a voting citizen has not been doubted for over two hundred years, it is equally significant that for over two hundred years *Ashby vs. White* has not been sought to tie put to purposes like the present. In seeking redress here these Kansas senators have wholly misconceived the functions of this Court. The writ of certiorari to the Kansas Supreme Court should therefore be dismissed."

We share the foregoing views. In our judgment they accord with sound principles of political jurisprudence and represent liberal and advanced thought on the working of constitutional and popular government as conceived in the fundamental Jaw. Taken as persuasive authorities, they offer enlightening understanding of the spirit of the United States institutions after which ours are patterned.

But these concurring opinions have more than persuasive value. As will be presently shown, they are the opinions which should operate to adjudicate the questions raised by the pleadings. To make the point clear, it is necessary, at the risk of unduly lengthening this decision, to make a statement and an analysis of the *Coleman vs. Miller* case. Fortunately, the annotation on that case in the *American Law Reports*, supra, comes to our aid and lightens our labor in this phase of the controversy.

Coleman vs. Miller was an original proceeding in mandamus brought in the Supreme Court of Kansas by twenty-one members of the Senate, including twenty senators who had voted against a resolution ratifying the Child Labor Amendment, and by three members of the House of Representatives, to compel the Secretary of the Senate to erase an indorsement on the resolution to the effect that it had been adopted by the Senate and to indorse thereon the words "as not passed." They sought to restrain the offices of the Senate and House of Representatives from signing the resolution, and the Secretary of State of Kansas from authenticating it and delivering it to the Governor.

The background of the petition appears to have been that the Child Labor Amendment was proposed by Congress in June, 1924; that in January, 1925, the legislature of Kansas adopted a resolution rejecting it and a copy of the resolution was sent to the Secretary of State of the United States; that in January, 1927, a new resolution was introduced in the Senate of Kansas ratifying the proposed amendment; that there were forty senators, twenty of whom voted for and twenty against the resolution; and that as a result of the tie, the Lieutenant Governor cast his vote in favor of the resolution.

The power of the Lieutenant Governor to vote was challenged, and the petition set forth the prior rejection of the proposed amendment and alleged that in the period from June 1924 to March 1927, the proposed amendment had been rejected by both houses of the legislatures of twenty-six states and had been ratified only in five states, and

that by reason of that rejection and the failure of ratification within a reasonable time, the proposed amendment had lost its vitality.

The Supreme Court of Kansas entertained jurisdiction of all the issues but, dismissed the petition on the merits. When the case reached the Supreme Court of the United States the questions were framed substantially in the following manner:

First, whether the court had jurisdiction; that is, whether the petitioners had standing to seek to have the judgment of the state court reversed; second, whether the Lieutenant Governor had the right to vote in case of a tie, as he did, it being the contention of the petitioners that "in the light of the powers and duties of the Lieutenant Governor and his relation to the Senate under the state Constitution, as construed by the Supreme Court of the state, the Lieutenant Governor was not a part of the 'legislature' so that under Article 5 of the Federal Constitution, he could be permitted to have a deciding vote on the ratification of the proposed amendment, when the Senate was equally divided"; and third, the effect of the previous rejection of the amendment and of the lapse of time after its submission.

The first question was decided in the affirmative. The second question, regarding the authority of the Lieutenant Governor to vote, the court avoided, stating: "Whether this contention presents a justiciable controversy, or a question which is political in its nature and hence not justiciable, is a question upon which the Court is equally divided and therefore the court expresses no opinion upon that point." On the third question, the Court reached the conclusion before referred to, namely, (1) that the efficacy of ratification by state legislature of a proposed amendment to the Federal Constitution is a political question, within the ultimate power of Congress in the exercise of its control and of the promulgation of the adoption of amendment, and (2) that the decision by Congress, in its control of the action of the Secretary of State, of the questions whether an amendment to the Federal Constitution has been adopted within a reasonable time, is not subject to review by the court.

The net result was that the judgment of the Supreme Court of Kansas was affirmed but on the grounds stated in the United States Supreme Court's decision. The nine justices were aligned in three groups. Justices Roberts, Black, Frankfurter and Douglas opined that the petitioners had no personality to bring the petition and that all the questions raised are political and nonjusticiable. Justices Butler and McReynolds opined that all the questions were justiciable; that the Court had jurisdiction of all such questions, and that the petition should have been granted and the decision of the Supreme Court of Kansas reversed on the ground that the proposal to amend had died of old age. The Chief Justice, Mr. Justice Stone and Mr. Justice Reed regarded some of the issues as political and nonjusticiable, passed by the question of the authority of the Lieutenant Governor to cast a deciding vote, on the ground that the Court was equally divided, and took jurisdiction of the rest of the questions.

The sole common ground between Mr. Justice Butler and Mr. Justice McReynolds, on the one, hand, and the Chief Justice, Mr. Justice Stone and Mr. Justice Reed, on the other, was on the question of jurisdiction; on the result to be reached, these two groups were divided. The agreement between Justices Roberts, Black, Frankfurter and Douglas, on the one hand, and the Chief Justice and Justices Stone and Reed, on the other, was on the result and on that part of the decision which declares certain questions political and nonjusticiable.

As the annotator in American Law Reports observes, the foregoing four opinions "show interestingly divergent but confusing positions of the Justices on the issues discussed." It cites an article in 48 Yale Law Journal, 1455, amusingly entitled "Sawing a Justice in Half," which, in the light of the divergencies in the opinions rendered, aptly queries "whether the proper procedure for the Supreme Court would not have been to reverse the judgment below and direct dismissal of the suit for want of jurisdiction." It says that these divergencies and line-ups of the justices "leave power to dictate the result and the grounds upon which the decision should be rested with the four

justices who concurred in Mr. Justice Black's opinion." Referring to the failure of the Court to decide the question of the right of the Lieutenant Governor to vote, the article points out that from the opinions rendered the "equally divided" court would seem under any circumstances to be an equal division of an odd number of justices, and asks "What really did happen? Did a justice refuse to vote on this issue? And if he did, was it because he could not make up his mind, or is it possible to saw a justice vertically in half during the conference and have him walk away whole?" But speaking in a more serious vein, the commentator says that decision of the issue could not be avoided on grounds of irrelevance, since if the court had jurisdiction of the case, decision of the issue in favor of the petitioners would have required reversal of the judgment below regardless of the disposal of the other issues.

From this analysis the conclusion is that the concurring opinions should be considered as laying down the rule of the case.

The respondent's other chief reliance is on the contention that a duly authenticated bill or resolution imports absolute verity and is binding on the courts. This is the rule prevailing in England. In the United States, "In point of numbers, the jurisdictions are divided almost equally pro and con the general principle (of these, two or three have changed from their original position), two or three adopted a special variety of view (as in Illinois), three or four are not clear, and one or two have not yet made their decisions." (IV Wigmore on Evidence, 3d Edition, 685, footnote.) It is important to bear in mind, in this connection, that the United States Supreme Court is on the side of those which favor the rule. (Harwood vs. Wentworth, 40 Law. ed., 1069; Lyon vs. Wood, 38 Law. ed., 854; Field vs. Clark, 36 Law. ed., 294.)

If for no other reason than that it conforms to the expressed policy of our law making body, we choose' to follow the rule. Section 313 of the old Code of Civil Procedure, as amended by Act No. 2210, provides: "Official documents may be proved as follows: * * * (2) the proceedings of the Philippine Commission, or of any legislative body that may be provided for in the Philippine Islands, or of Congress, by the journals of those bodies or of either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or secretary, or printed by their order; Provided, That in the case of Acts of the Philippine Commission or the Philippine Legislature, when there is an existence of a copy signed by the presiding officers and secretaries of said bodies, it shall be conclusive proof of the provisions of such Acts and of the due enactment thereof."

But there is more than statutory sanction for conclusiveness.

This topic has been the subject of a great number of decisions and commentaries written with evident vehemence. Arguments for and against the rule have been extensive and exhaustive. It would be presumptuous on our part to pretend to add more, even if we could, to what has already been said. With such vast mass of cases to guide our judgment and discretion, our labor is reduced to an intelligent selection and borrowing of materials and arguments under the criterion of adaptability to a sound public policy.

The reasons adduced in support of enrollment as contrasted with those which opposed it are, in our opinion, almost decisive. Some of these reasons are summarized in 50 American Jurisprudence, section 150 as follows:

"SEC. 150. Reasons for Conclusiveness.—It has been declared that the rule against going behind the enrolled bill is required by the respect due to a coequal and independent department of the government, and it would be an inquisition into the conduct of the members of the legislature, a very delicate power, the frequent exercise of which must lead to endless confusion in the administration of the law. The rule is also one of convenience, because courts could not rely on the published session laws, but would be required to look beyond these to the journals of the legislature and often to any printed bills and amendments which might be found after the adjournment of the legislature. Otherwise, after relying on the prima facie evidence of the enrolled bills, authenticated as exacted by the Constitution, for years, it might be ascertained from the journals that an act theretofore enforced had never become a law. In this respect, it has been declared that there is quite enough

uncertainty as to what the law is without saying that no one may be certain that an act of the legislature has become such until the issue has been determined by some court whose decision might not be regarded as conclusive in an action between the parties."

From other decisions, selected and quoted in IV Wigmore on Evidence, 696, 697, we extract these passages:

"I think the rule thus adopted accords with public policy. Indeed, in my estimation, few things would be more mischievous than the introduction of the opposite rule. * * * The rule contended for is that the Court should look at the journals of the Legislature to ascertain whether the copy of the act attested and filed with the Secretary of State conforms in its contents with the statements of such journals. This proposition means, if it has any legal value whatever, that, in the event of a material discrepancy between the journal and the enrolled copy, the former is to be taken as the standard of veracity and the act is to be rejected. This is the test which is to be applied not only to the statutes now before the Court, but to all statutes; not only to laws which have been recently passed, but to laws the most ancient. To my mind, nothing can be more certain than that the acceptance of this doctrine by the Court would unsettle the entire statute law of the State. We have before us some evidence of the little reliability of these legislative journals. * * * Can any one deny that if the laws of the State are to be tested by a comparison with these journals, so imperfect, so unauthenticated, the stability of all written law will be shaken to its very foundations? * * * We are to remember the danger, under the prevalence of such a doctrine, to be apprehended from the intentional corruption of evidences of this character. It is scarcely too much to say that the legal existence of almost every legislative act would be at the mercy of all persons having access to these journals. * * *" ([1866], Beasley, C. J., in *Pangborn vs. Young*, 32 N. J. L., 29, 34.)

"But it is argued that if the authenticated roll is conclusive upon the Courts, then less than a quorum of each House may by the aid of corrupt presiding officers impose laws upon the State in defiance of the inhibition of the Constitution. It must be admitted that the consequence stated would be possible. Public authority and political power must of necessity be confided to officers, who being human may violate the trusts reposed in them. This perhaps cannot be avoided absolutely. But it applies also to all human agencies. It is not fit that the Judiciary should claim for itself a purity beyond all others; nor has it been able at all times with truth to say that its high places have not been disgraced. The framers of our government have not constituted it with faculties to supervise coordinate departments and correct or prevent abuses of their authority. It cannot authenticate a statute; that power does not belong to it; nor can it keep a legislative journal." (1869, Frazer, J., in *Evans vs. Browne*, 30 Ind., 514, 524.)

Professor Wigmore in his work on Evidence—considered a classic, and described by one who himself is a noted jurist, author, and scholar, as "a permanent contribution to American law" and having "put the matured nineteenth-century law in form to be used in a new era of growth"—unequivocally identifies himself with those who believe in the soundness of the rule. The distinguished professor, in answer to the argument of Constitutional necessity, i. e., the impossibility of securing in any other way the enforcement of constitutional restrictions on legislative action, says:

"(1) In the first place, note that it is impossible of consistent application. If, as it is urged, the Judiciary are bound to enforce the constitutional requirements of three readings, a two-thirds vote, and the like, and if therefore an act must be declared no law which in fact was not read three times or voted upon by two-thirds, this duty is a duty to determine according to the actual facts of the readings and the votes. Now the journals may not represent the actual facts. That duty cannot allow us to stop with the journals, if it can be shown beyond doubt that the facts were otherwise than therein represented. The duty to uphold a law which in fact was constitutionally voted upon is quite as strong as the duty to repudiate an act unconstitutionally voted upon. The Court will be going as far wrong in repudiating an act based on proper votes falsified in the journal as it will be in upholding an act based on improper votes falsified in the enrolment. This supposed duty, in short, is to see that the constitutional facts did exist; and it cannot stop short with the journals. Yet, singularly enough, it

is unanimously conceded that an examination into facts as provable by the testimony of members present is not allowable. If to support this it be said that such an inquiry would be too uncertain and impracticable, then it is answered that this concedes the supposed constitutional duty not to be inexorable, after all; for if the duty to get at the facts is a real and inevitable one, it must be a duty to get at them at any cost; and if it is merely a duty that is limited by policy and practical convenience, then the argument changes into the second one above, namely, how far it is feasible to push the inquiry with regard to policy and practical convenience; and from this point of view there can be but one answer.

"(2) In the second place, the fact that the scruple of constitutional duty is treated thus inconsistently and pushed only up to a certain point suggests that it perhaps is based on some fallacious assumption whose defect is exposed only by carrying it to its logical consequences. Such indeed seems to be the case. It rests on the fallacious notion that every constitutional provision is 'per se' capable of being enforced through the Judiciary and must be safeguarded by the Judiciary because it can be in no other way. Yet there is certainly a large field of constitutional provision which does not come before the Judiciary for enforcement, and may remain unenforced without any possibility or judicial remedy. It is not necessary to invoke in illustration such provisions as a clause requiring the Governor to appoint a certain officer, or the Legislature to pass a law for a certain purpose; here the Constitution may remain unexecuted by the failure of Governor or Legislature to act, and yet the Judiciary cannot safeguard and enforce the constitutional duty. A clearer illustration may be had by imagining the Constitution to require the Executive to appoint an officer or to call out the militia whenever to the best of his belief a certain state of facts exists; suppose he appoints or calls out when in truth he has no such belief; can the Judiciary attempt to enforce the Constitution by inquiring into his belief? Or suppose the Constitution to enjoin on the Legislators to pass a law upon a certain subject whenever in their belief certain conditions exist; can the Judiciary declare the law void by inquiring and ascertaining that the Legislature, or its majority, did not have such a belief? Or suppose the Constitution commands the Judiciary to decide a case only after consulting a soothsayer, and in a given case the Judiciary do not consult one; what is to be done?

"These instances illustrate a general situation in which the judicial function of applying and enforcing the Constitution ceases to operate. That situation exists where the Constitution enjoins duties which affect the motives and judgment of a particular independent department of government,—Legislature, Executive, and Judiciary. Such duties are simply beyond enforcement by any other department if the one charged fails to perform them. The Constitution may provide that no legislator shall take a bribe, but an act would not be treated as void because the majority had been bribed. So far as the Constitution attempts to lay injunctions in matters leading up to and motivating the action of a department, injunctions must be left to the conscience of that department to obey or disobey. Now the act of the Legislature as a whole is for this purpose of the same nature as the vote of a single legislator. The Constitution may expressly enjoin each legislator not to vote until he has carefully thought over the matter of legislation; so, too, it may expressly enjoin the whole Legislature not to act finally until it has three times heard the proposition read aloud. It is for the Legislature alone, in the latter case as well as in the former, to take notice of this injunction; and it is no more the function of the Judiciary in the one case than in the other to try to keep the Legislature to its duty:

* * * * *

"The truth is that many have been carried away with the righteous desire to check at any cost the misdoings of Legislatures. They have set such store by the Judiciary for this purpose that they have almost made them a second and higher Legislature. But they aim in the wrong direction. Instead of trusting a faithful Judiciary to check an inefficient Legislature, they should turn to improve the Legislature. The sensible solution is not to patch and mend casual errors by asking the Judiciary to violate legal principle and to do impossibilities with the Constitution; but to represent ourselves with competent, careful, and honest legislators, the work of whose hands on the statute-roll may come to reflect credit upon the name of popular government" (4 Wigmore on Evidence, 699-702.)

The petitioners contend that the enrolled bill rule has not found acceptance in this jurisdiction, citing the case of

United States vs. Pons (34 Phil., 729). It is argued that this Court examined the journal in that case to find out whether or not the contention of the appellant was right. We think the petitioners are in error.

It will be seen upon examination of section 313 of the Code of Civil Procedure, as amended by Act No. 2210, that, roughly, it provides two methods of proving legislative proceedings: (1) by the journals, or by published statutes or resolutions, or by copies certified by the clerk or secretary or printed by their order; and (2) in case of acts of the Legislature, by a copy signed by the presiding officers and secretaries thereof, which shall be conclusive proof of the provisions of such Acts and of the due enactment thereof.

The Court looked into the journals in United States vs. Pons because, in all probability, those were the documents offered in evidence. It does not appear that a duly authenticated copy of the Act was in existence or was placed before the Court; and it has not been shown that if that had been done, this Court would not have held the copy conclusive proof of the due enactment of the law. It is to be remembered that the Court expressly stated that it "passed over the question" of whether the enrolled bill was conclusive as to its contents and the mode of its passage.

Even if both the journals and an authenticated copy of the Act had been presented, the disposal of the issue by the Court on the basis of the journals does not imply rejection of the enrollment theory, for, as already stated, the due enactment of a law may be proved in either of the two ways specified in section 313 of Act No. 190 as amended. This Court found in the journals no signs of irregularity in the passage of the law and did not bother itself with considering the effects of an authenticated copy if one had been introduced. It did not do what the opponents of the rule of conclusiveness advocate, namely, look into the journals behind the enrolled copy in order to determine the correctness of the latter, and rule such copy out if the two, the journals and the copy, be found in conflict with each other. No discrepancy appears to have been noted between the two documents and the court did not say or so much as give to understand that if discrepancy existed it would give greater weight to the journals, disregarding the explicit provision that duly certified copies "shall be conclusive proof of the provisions of such Acts and of the due enactment thereof."

In view of the foregoing considerations, we deem it unnecessary to decide the question of whether the senators and representatives who were ignored in the computation of the necessary three-fourths vote Mere members of Congress within the meaning of section 1 of Article XV of the Philippine Constitution.

The petition is dismissed without costs.

Moran, C.J., Pablo, and Hontiveros, JJ., concur.

CONCURRING

BENGZON, J., with whom concurs PADILLA, J.:

Although I maintain that we have jurisdiction as petitioners contend, I can't vote for them, because the enrolled copy of the resolution and the legislative journals are conclusive upon us.

- The overwhelming majority of the state courts are of the opinion that the question whether an amendment to the existing constitution has been duly proposed in the manner required by such constitution properly belongs to the judiciary. That is the position taken by Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, Ohio, Oregon, Rhode Island, Washington and Wisconsin. (See 12 C. J., 880 and 16 C. J. S., 437.) (See also 11 Am. Jur., 639.) Only North Dakota and Oklahoma have adopted a different

view. (16 C. J. S., 437, notes 41 and 43.)

" 'The authorities are thus practically uniform in holding that whether a constitutional amendment has been properly adopted according to the requirements of an existing constitution is a judicial question.' (McConaughy vs. Secretary of State, 106 Minn., 392, 409; 119 N. W., 408.)" (12 C. J., 880.)

" 'An examination of the decisions shows that the courts have almost uniformly exercised the authority to determine the validity of the proposal, submission, or ratification of constitutional amendments. It has been judicially determined whether a proposed amendment received the constitutional majority of votes. (Knight vs. Shelton, 134 Fed., 423; Rice vs. Palmer, 78 Ark., 432; 96 S. W., 396; Green vs. State Canvassers, 5 Ida., 130; 47 P., 259; 95 Am. S. R., 169; In re Denny, 156 Ind., 104; 59 N. E., 359; 51 L. R. A., 722; Dayton vs. St. Paul, 22 Minn., 400; Tecumseh Nat. Bank vs. Saunders, 51 Nebr., 801; 71 N. W., 779; Bott vs. Wurts, 63 N. J. L., 289; 43 A., 744, 881; 45 L. R. A., 251; State vs. Foraker, 46 Oh. St., 677; 23 N. E., 491; 6 L. R. A., 422.)' " (12 C. J., 880.)

As our constitutional system ("limitation" of powers) is more analogous to state systems than to the Federal theory of "grant" of powers, it is proper to assume that the members of our Constitutional convention, composed mostly of lawyers, and even the members of the American Congress that approved the Tydings-McDuffie enabling legislation, contemplated the adoption of such constitutional practice in this portion of the world. Hence, my conclusion that in Philippine polity, courts may and should take cognizance of the subject of this controversy.

- The petitioners' grievance is that, contrary to the provisions of the Constitution (Article XV), the proposed amendment was not approved "by a vote of three-fourths of all the members of the Senate and of the House of Representatives." They complain that certain Senators and some members of the House of Representatives were not allowed to participate and were not considered in determining the required three-fourths vote.

The respondents, besides denying our power to revise the counting, assert that the persons mentioned, for all practical purposes did not belong to the Congress of the Philippines on the day the amendment was debated and approved.

Central target of attack is Republic Act No. 73 "to submit to the Filipino people, for approval or disapproval, the amendment to the Constitution of the Philippines to be appended as an Ordinance thereto, proposed by the Congress of the Philippines in a Resolution of both Houses, etc."

Petitioners would have a declaration of invalidity of that piece of legislation. Its first section provides that "the amendment to the Constitution of the Philippines to be appended as an Ordinance thereto, proposed by the Congress of the Philippines in a Resolution of both Houses, adopted on September eighteen, nineteen hundred and forty-six, shall be submitted to the people, for approval or disapproval, at a general election which shall be held on March eleven, nineteen hundred and forty-seven, in accordance with the provisions of this Act."

By this provision, the Legislative Department with the concurrence of the Executive, declares in the most solemn manner that the resolution proposing the amendment was duly carried. Therefore, it would be pertinent to inquire whether those petitioners who are members of the Congress that approved Republic Act No. 73 are not precluded from questioning its validity or veracity, unless they assert and prove that in Congress they opposed its enactment. In default of a contrary showing, is it not reasonable to suppose that as members of Congress they endorsed—or at least are bound by—the declarations of Republic Act No. 73? And if a private party is estopped from challenging the constitutional efficacy of a law whose enactment he has procured (see 16 C. J. S., 198 and 11 Am. Jur., 767) should not a member of Congress be estopped from impugning a statute he helped (presumably) to pass? Parenthetically it should be added that the remaining petitioners, as mere citizens, would probably have no suable claim. (Cf. 16 C. J. S., 169.)

- But perhaps these points should be left to future study and decision, because the instant litigation may be solved by the application of other well-established principles founded mainly on the traditional respect which one department of the Government entertains for the actions of the others.

On account of the separation of powers, which I firmly believe, I agree to the applicability and binding effect of section 313 of Act No. 190, as amended by Act No. 2210, which, in my opinion, has not been abrogated by the Rules of Court. I likewise believe the soundness of the doctrine expounded by the authoritative Wigmore on a question admittedly within the domain of the law on evidence: conclusiveness of the enrolled bill or resolution upon the judicial authorities.

- Withal, should that principle of conclusiveness be denied, the respondents could plausibly fall back on the time-honored rule that the courts may not go behind the legislative journals to contradict their veracity. (United States vs. Pons, 34 Phil., 729.)

According to the minutes of the joint session Exhibit 3, in the Senate sixteen (16) senators approved the resolution against five (5), with no absences; whereas in the House sixty-eight (68) congressmen voted "yes", eighteen (18) voted "no", one abstained from voting and one was absent. Therefore, 16 being three-fourths of the total membership of twenty-one of the Senate (16 plus 5), and 68 being more than three-fourths of the total membership of eighty-eight (88) of the House of Representatives (68 plus 18 plus 1 plus 1), it is crystal clear that the measure was upheld by the number of votes prescribed by the Constitution.

True, there are in the said exhibit statements by two Senators and one congressman to the effect that the votes did not constitute the majority required by the Constitution. However, in the face of the incontestable arithmetical computation above shown, those protests must be attributed to their erroneous counting of votes; none of them having then asserted that "there were absent Senators or Congressmen who had not been taken into account." For although we might have judicial notice of the number of proclaimed members of Congress, still we are no better qualified than the Legislative to determine the number of its actual membership at any given moment, what with demises or demissions, remotions or suspensions.

CONCURRING AND DISSENTING

HILADO, J.:

I concur in the result of the majority opinion as well as in the grounds supporting the same in so far as they are not inconsistent with the applicable reasons supporting my concurring: opinion in Vera vs. Avelino (77 Phil., 192). But I dissent from that part of the majority opinion (page 3, ante) wherein it is stated that if the suspended members of the Senate and House of Representatives had been counted "the affirmative votes in favor of the proposed amendment would have been short of the necessary three-fourths vote in either branch of Congress."

The basic theories underlying my aforesaid concurring opinion in Vera vs. Avelino, supra, are, first, that the questions therein raised were political in nature within the exclusive province of the legislature, and, second, that the judiciary does not possess jurisdiction over such questions. It is to me evident that the questions involved in the present proceeding are no less political than those involved in that former Senate case. It is deemed unnecessary to dwell at more length upon the grounds of my said concurring opinion.

The ground for my dissent from the above-quoted statement of the majority opinion in the instant proceeding is that the suspension of the said members of the Senate and the House of Representatives being a political question, the judiciary, being without jurisdiction to interfere with the determination thereof by the proper political

department of the government, has perforce to abide by said determination if it were to go any further in the; consideration of the case. In other words, any further discussion of the case in this Court will have to start from the premise that said members have been suspended by the respective Houses of Congress and that we, being powerless to interfere with the matter of said suspension, must consider ourselves bound by the determination of said political branches of the government. As said by the Supreme Court of the United States in *Philipps vs. Payne* (2 Otto. [U. S.], 130; 23 Law. ed., 649), "in cases involving the action of the political departments of the government, the judiciary is bound by such action." (*Williams vs. Insurance Co.*, 13 Pet., 420; *Garcia vs. Lee*, 12 Pet., 511; *Kennel vs. Chambers*, 14 How., 38; *Foster vs. Neilson*, 2 Pet., 209; *Nabob of Carnatio vs. East Ind. Co.*, Ves. Jr., 60; *Lucer vs. Barbon*, 7 How., 1; *R. I. vs. Mass.*, 12 Pet., 714.)

If, then, we are to proceed, as I think we should, upon the premise that said members have been thus suspended, there will be to my mind, absolutely no justification, ground nor reason for counting them in the determination of whether or not the required three-fourths vote was attained. Their case was entirely different from that of members who, not having been suspended nor otherwise disqualified, had the right to vote upon the resolution. In the case of the latter, they had, like all other members similarly situated, three alternatives, namely, to vote in favor of the resolution, to vote against it, or to abstain from voting. If they voted in favor, of course, their votes had to be counted among those supporting the resolution. If they voted against, of course, their votes had to be counted with those opposing. And if they abstained from voting, there would be sound justification for counting them as not in favor of the resolution, because by their very abstention they impliedly but necessarily would signify that they did not favor the resolution, for it is obvious that if they did, they would have voted in favor of it. On the other hand, those suspended members who, by reason of the suspension, whose validity or legality we are devoid of jurisdiction to inquire into, cannot be similarly treated. In their case there would be no way of determining which way their votes would have gone or whether or not they would have abstained from voting. In this connection, in considering the hypothesis of their voting in case they had not been suspended, I must go upon the assumption that while those suspended members may belong to the political party which, as a party, was opposed to the resolution, still they would have voted independently and following their individual convictions. In this connection, it might not be amiss to mention that there were quite a number of minority members of the legislature who voted for the resolution. Hence, we are not in a position to say that said suspended members, if they had not been suspended, would have voted against the resolution, nor in favor of it either, nor that they would have abstained from voting. Why then should they be counted with the members who voted against the resolution or those who, having the right to vote, abstained from doing so? Why should we count them as though we knew that they would have voted against the resolution, or even that they would have abstained from voting? Soundly construed, I submit that the Constitution does not, and could not, include suspended members in the determination of the required three-fourths vote.

I take it, that the drafters in providing in Article XV, section 1, of the Constitution that "The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting (*italics supplied*) separately * * *", advisedly used the vital and all-important word "voting" therein. I take it, that they meant to refer to the members voting, undoubtedly expecting that all members not suspended or otherwise disqualified, would cast their votes one way or the other. But I am here even making a concession in favor of the opponents when I say that those who, with the right to vote, abstain from voting, may be counted among those not in favor of the measure. But what I cannot bring myself to conceive is that the quoted provision should have intended to count suspended or disqualified members as opposed to the measure, or not being in favor of it, without it being possible to know which way they would have voted or that they would have abstained from voting—that they would never have voted in favor of the measure. If I should ask why we should not count such suspended or disqualified members among those in favor of the measure, I am sure those who

opine differently would answer, because we do not know that they would have voted in favor of it. By the same token, if they should ask me why we should not count them among those against the measure, I would answer that we do not know that they would have voted against it or that they would have abstained from voting. All this inevitably leads to the conclusion—the only one possible—that such suspended or disqualified members should not and cannot be counted due to that very impossibility of knowing which way they would have voted or whether they would have abstained from voting. I stand for a sound and rational construction of the constitutional precept.

PARAS, J.:

I fully concur in the foregoing opinion of Mr. Justice Hilado.

DISSENTING

PERFECTO, J.:

To surrender or not to surrender, that is the question.

The last bastion of democracy is in danger.

Those who are manning it are summoned to give up without the least resistance, and the banner of the Constitution is silently and meekly hauled down from its pole to be offered as a booty to the haughty standard bearers of a new brand of Fascism. In the words of Cicero, "recedere de statu suae dignitatis."

Cardinal moral bearings have been lost in the psychological chaos suffered by those, throwing overboard all ideals as burdensome and dangerous ballast, in desperate efforts to attain at all costs individual survival, even in ignominy, could not stand the impact of initial defeats at the hands of invading fearsome military hordes.

The present is liable to confusion. Our minds are subject to determinate and indeterminate ideological pressures. Very often man walks in the darkness of a blind alloy obeying the pullings and pushings of hidden and unhidden forces, or the arcane predeterminations of the genes of human chromosomes. A rudderless ship floating in the middle of an ocean without any visible shoreline, is bound to be wrecked at the advent of the first typhoon. From early youth we begin to hear and learn about the true ideals. Since then we set them as the guiding stars in our actions and decisions, but in the long travel of life, many times the clouds dim or completely darken those stars and then we have only to rely on our faith in their existence and on habit, becoming unerring if long enough followed, of adjusting our conduct to their guidance in calm and cloudless nights. We are sitting in judgment to pass upon the conflicts, disputes and disagreements of our fellowmen. Let us not forget that the day shall come that we will be judged on how we are judging. Posterity shall always have the final say. When the time solvent has dissolved the human snag, then shall be rendered the final verdict as to whether we have faced our task fearlessly or whether our hearts have shrunk upon the magnitude of our duties and have chosen the most comfortable path of retreat. Then it will be conclusively known whether we have kept burning the fire of justice as the vestals did keep burning the tripod fire in the temples of old. Some of us will just return into anonymity, covered by the cold mist of historical oblivion; others will have their names as bywords repeatedly pronounced with popular hate or general contempt; and still others will be remembered with universal gratefulness, love and veneration, the guerdon accorded to all those who remained faithful to the fundamental tenets of justice. Winnowing time will sift the chaff from the grain.

This is one of the cases upon which future generations will decide if this tribunal has the sturdy courage to keep its responsibility in proper high level. It will need the passing of decades and perhaps centuries before a conclusive verdict is rendered, whether we should merit the scorn of our fellow citizens and our decision shall be

cursed as the Dred Scot decision of Chief Justice Taney, the one that plunged the United States into civil war, or whether in the heart of each future Filipino citizen there will be a shrine in which our memory will be remembered with gratefulness, because we have shown the far-reaching judicial statesmanship of Chief Justice Marshall, the legal genius who fixed and held the rock bottom foundations which made of the American Constitution the veritable supreme law of the land and established the role of the tribunals as the ultimate keepers of the Constitution. But for sure it will be rendered, and it will be impartial and unbiased, exacting and pitiless, with unappealable finality, and for the one condemned Dante wrote this lapidary line: "lasciati ogni speranza."

Unless the vision of our mental eyes should be shut up by the opaque cornea of stubborn refusal to see reality or should be impaired by the polaroid visors of prejudice, there is no question that at the time when the resolution in question, proposing an amendment to the Constitution, was adopted, the members of the Senate were 24 and the members of the House of Representatives were 96, and that the 16 members of the Senate who voted in favor of the resolution, by undisputable mathematical computation, do not constitute three-fourths of the 24 members thereof, and the 68 members of the House of Representatives who voted for the resolution, by equally simple arithmetical operation, do not constitute three-fourths of the 96 members of the said chamber. The official certifications made by the presiding officers of the two houses of Congress to the effect that three-fourths of all the members of the Senate and three-fourths of all the members of the House of Representatives voted for the resolution, being untrue, cannot change the facts. Nothing in existence can. The certification, being a clear falsification of public document punished by article 171 of the Revised Penal Code with prison mayor and a fine not to exceed P5,000, cannot give reality to a fiction based in a narration of facts that is in conflict with the absolute metaphysical reality of the events.

FACTS OF THE CASE

Petitioners are citizens of the Philippines, taxpayers and electors, and besides some of them are members of the Senate, others are members of the House of Representatives, and still others are presidents of political parties, duly registered, with considerable following in all parts of the Philippines.

The first three respondents are chairman and members, respectively, of the Commission on Elections and the remaining three are respectively the Treasurer of the Philippines, the Auditor General and the Director of the Bureau of Printing.

Petitioners alleged that the Senate is actually composed of 24 Senators, 8 elected in 1941 and 16 in April 23, 1946, and that the House of Representatives is composed of 98 members, elected on April 23, 1946, minus 2 who resigned to assume other positions in the Government.

On September 18, 1946, there was presented for adoption by the Congress of the Philippines a resolution proposing an amendment to the Constitution of the Philippines to be appended as an ordinance thereto, which reads as follows:

"Resolved by the Senate and House of Representatives of the Philippines in joint session assembled, by a vote of not less than three-fourths of all the Members of each House voting separately, To propose, as they do hereby propose, the following amendment to the Constitution of the Philippines to be appended as an Ordinance thereto:

" 'ORDINANCE APPENDED TO THE CONSTITUTION

" 'Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six,

pursuant to the provisions of Commonwealth Act Numbered seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization, of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.'

"This amendment shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election at which it is submitted to the people for the ratification pursuant to Article XV of the Constitution."

Sixteen Senators voted in favor of the resolution and 5 against it, and 68 Representatives voted in favor and 18 against.

Thereafter, Congress passed Republic Act No. 73 calling a plebiscite to be held on March 11, 1947, for the purpose of submitting to the people the proposed amendment embodied in the resolution, and appropriating P1,000,000 for said purpose.

Petitioners assail the validity of Republic Act No. 73 as unconstitutional because Congress may not, by said act, submit to the people for approval or disapproval the proposed amendment to the Constitution embodied in resolution Exhibit B inasmuch as, to comply with the express provisions of Article XV of the Constitution, requiring the affirmative votes of three-fourths of all the members of the Senate and of the House of Representatives voting separately, three-fourths of the 24 members of the Senate is constituted by at least 18 Senators, 2 more than those who actually voted for the resolution in question, and three-fourths of the 98 members of the House of Representatives should at least be 72 Representatives, or 4 more than those who actually voted for the resolution.

Respondents deny that the Senate is composed of 24 Senators, by excluding from them petitioners Jose O. Vera, Ramon Diokno and Jose E. Romero and allege that the House of Representatives is not composed of 98 members but of only 90. They admit that at the joint session of Congress to consider the resolution Exhibit B, in favor of the resolution 16 votes were cast in the Senate and in the House of Representatives 68 and 5 in the Senate and 18 in the House of Representatives had voted against. They admit the approval of Republic Act No. 73 and that necessary steps to hold the plebiscite therein provided are being taken, but deny that said act is unconstitutional, and by way of defense, allege that the resolution Exhibit B was adopted by three-fourths of all the qualified members of the Senate and of the House of Representatives voting separately and, consequently, Republic Act No. 73, ordering its submission to the people for approval or disapproval, fixing a date for a general election, and appropriating public funds for said purpose, is valid and constitutional.

At the hearing of this case both parties submitted the following stipulation:

"The parties through their undersigned counsel hereby stipulate the following facts:

"1. That Messrs. Jose O. Vera, Ramon Diokno and Jose E. Romero were, by the majority vote of the Commission on Elections, proclaimed elected senators in the election of April 23, 1946;

"2. That when the Senate convened on May 25, 1946, the said senators-elect took part in the election of the President of that body; but that before the senators-elect were sworn in by the President of the Senate, a resolution was presented, and subsequently approved, to defer the administration of oath and the seating of Messrs. Jose O. Vera, Ramon Diokno, and Jose E. Romero, pending the hearing and decision of the protest

lodged against their election;

"3. That on the 25th of May, 1946, the said senators individually took their alleged oath of office before notaries public, and not on the floor, and filed said oaths with the Secretary of the Senate during the noon recess of the said date;

"4. That Messrs. Vera and Romero filed with the Auditor of the Senate other oaths of office accomplished by them outside of the floor before a notary public and the Secretary of the Senate, on September 5 and August 31, 1946, respectively; and that their corresponding salaries from April 23, 1946, were paid on August 31, 1946;

"5. That Mr. Diokno, having left for the United States, his son Jose W. Diokno filed a copy of Mr. Diokno's alleged oath of office dated May 25, 1946, with the Auditor of the Senate on October 15, 1946, and on said date his salary was paid corresponding to the period from April 23 to October 15, 1946;

"6. That all three have subsequently received their salaries every fifteen days;

"7. That since the approval of the resolution deferring their seating and oaths up to the present time, the said Messrs. Vera, Diokno, and Romero have not been allowed to sit and take part in the deliberations of the Senate and to vote therein, nor do their names appear in the roll of the Senate;

"8. That before May 25, 1946, the corresponding provincial boards of canvassers certified as having been elected in the election held on April 23, 1946, ninety-eight representatives, among them Messrs. Alejo Santos and Jesus B. Lava for Bulacan, Jose Cando and Constancio P. Padilla for Nueva Ecija, Amado M. Yuson and Luis Taruc for Pampanga, Alejandro Simpaucio for Tarlac, and Vicente F. Gustilo for Negros Occidental;

"9. That the aforesaid eight members-elect of the House of Representatives took part in the election of the Speaker of the House of Representatives held on May 25, 1946;

"10. That before the members-elect of the House of Representatives were sworn in by the Speaker, Mr. Topacio Nueno, representative for Manila, submitted a resolution to defer the taking of oath and seating of Luis Taruc and Amado Yuson for Pampanga, Constancio P. Padilla and Jose Cando for Nueva Ecija, Alejandro Simpaucio for Tarlac, Alejo Santos and Jesus Lava for Bulacan, and Vicente F. Gustilo for Negros Occidental 'pending the hearing and decision on the protests lodged against their election,' copy of the resolution being attached to and made part of this stipulation as Exhibit 1 thereof;

"11. That the resolution Exhibit 1 was, upon motion of Representative Escareal and approved by the House, referred for study to a committee of seven, which up to the present has not reported, as shown by the Congressional Record for the House of Representatives;

"12. That the eight representatives-elect included in the resolution were not sworn in on the floor and have not been so sworn in or allowed to sit up to the present time, nor have they participated in any of the proceedings of the House of Representatives except during the debate of the Escareal motion referred to in paragraph 11 hereof, nor cast any vote therein since May 25, 1946, and their names do not appear in the roll of the members of the House except as shown by the Congressional Record of the House of Representatives, nor in the roll inserted in the official program for the inauguration of the Republic of the Philippines hereto attached as Exhibit 2 hereof;

"13. That the eight representatives-elect above mentioned took their alleged oaths of office on the date set opposite their names, as follows:

"Jose Cando

May 25, 1946

"Vicente Gustilo

May 25, 1946

"Constancio Padilla

May 22, 1946

"Alejo Santos

May 23, 1946

"Luis M. Taruc

May 25, 1946

"Amado M. Yuson

May 25, 1946

"Jesus B. Lava

May 25, 1946

"Alejandro Simpauco

May 25, 1946

all of which oaths were taken before notaries public, with the exception of the first four who took their oaths before Mr. Narciso Pimentel, Secretary of the House;

"14. That said oaths were filed with the Auditor through the office of the Secretary of the House of Representatives;

"15. That the persons mentioned in paragraph 13 were paid salaries for the term beginning April 23, 1946, up to the present, with the exception of Messrs. Luis Taruc and Jesus Lava, to whom payment was suspended since August 16;

"16. That Messrs. Alejo Santos and Vicente F. Gustilo took their oaths before the Speaker of the House of Representatives and were allowed to sit on September 30, 1946, the last day of the Special Sessions;

"17. That in addition to the eight persons above mentioned, two members of the House, Representatives Jose C. Zulueta and Narciso Ramos, had resigned before the resolution proposing an amendment to the Constitution was discussed and passed on September 18, 1946;

"18. That the voting on the resolution proposing an amendment to the Constitution was made by the Secretary calling the roll of each house and the votes cast were as shown in the attached certificate of the Secretary of the House of Representatives hereto attached, marked Exhibit 3 and made a part hereof; and

"19. That the Congressional Records for the Senate and House of Representatives and the alleged oaths of office are made a part of this Stipulation by reference thereto, respondents reserving the right to question their materiality and admissibility.

"Manila, Philippines, November 25, 1946.

"For the petitioners: "For the respondents:

"JOSE E. ROMERO

"ROMAN OZAETA

"ANTONIO BARREDO

"Secretary of Justice

"JOSE B. L. REYES

"First Asst. Solicitor General"

PETITIONERS' PERSONALITY

Whether petitioners have or have not the personality to file the petition in this case is the first question we have to consider.

No party raised the question, but it having arisen in the course of the Court's deliberation, we should not evade deciding it and giving what in law and justice should be the answer.

To our mind there is no doubt that petitioners have the personality to institute the present recourse of prohibition. If petitioners should lack that personality, such legal defect would not certainly have failed to be noticed by respondents themselves.

Respondents' failure to raise the question indicates their conviction that petitioners have the necessary legal personality to file the petition, and we do not see any reason why such personality should be put in doubt.

Petitioners are divided into three groups: the first is composed of senators; the second, of representatives; and the third, of presidents of four political parties.

All of the individuals composing the first two groups, with the exception of Senators Jose O. Vera, Ramon Diokno, and Jose E. Romero, are members of either of the two houses of Congress and took part in the consideration of Resolution Exhibit B and of Republic Act No. 73, while the above three excepted senators were the ones who were excluded in the consideration of said resolution and act and were not counted for purposes of determining the three-fourths constitutional rule in the adoption of the resolution.

In paragraph eight of the petition it is alleged that respondents have taken all the necessary steps for the holding of the general election on March 11, 1947, and that the carrying out of said acts "constitute an attempt to enforce the resolution and act aforementioned in open violation of the Constitution," is without or in excess of respondents' jurisdiction and powers, "violative of the rights of the petitioners who are members of the Congress, and will cause the illegal expenditure and disbursement of public funds and end in an irreparable injury to the taxpayers and the citizens of the Philippines, among whom are the petitioners and those represented by them in their capacities mentioned above."

There should not be any question that the petitioners who are either senators or members of the House of Representatives have direct interest in the legal issues involved in this case as members of the Congress which adopted the resolution, in open violation of the Constitution, and passed the act intended to make effective such unconstitutional resolution. Being members of Congress, they are even duty bound to see that the latter act within the bounds of the Constitution which, as representatives of the people, they should uphold, unless they are to commit a flagrant betrayal of public trust. They are representatives of the sovereign people and it is their sacred duty to see to it that the fundamental law embodying the will of the sovereign people is not trampled upon.

The four political parties represented by the third group of petitioners, represent large groups of our population, perhaps nearly one-half of the latter, and the numerous persons they represent are directly interested and will personally be affected by the question whether the Constitution should be lightly taken and can easily be violated without any relief and whether it can be amended by a process openly repugnant to the letter of the Constitution itself.

As a matter of fact, the vital questions raised in this case affect directly each and every one of the citizens and

inhabitants of this country. Whether our Constitution is, as it is supposed to be, a paramount law or just a mere scrap of paper, only good to be thrown into a waste basket, is a matter of far-reaching importance to the security, property, personal freedom, life, honor, and interests of the citizens. That vital question will necessarily affect the way of life of the whole people and of its most unimportant unit. Each and every one of the individuals inhabiting this land of ours shall have to make plans for the future depending on how the question is finally decided. No one can remain indifferent; otherwise, it will at his peril.

Our conclusion is that petitioners have full legal personality to institute the present action; and much more, those who are members of Congress have the legal duty to institute it, lest they should betray the trust reposed in them by the electorate.

24 SENATORS

The first question raised by respondents' answer refers to the actual number of the members of the Senate. According to petitioners there are 24 of them while according to respondents there are only 21, excluding Senators Jose O. Vera, Ramon Diokno, and Jose E. Romero, because, according to them, "they are not duly qualified and sworn in members of the Senate."

This allegation appears to be belied by the first seven paragraphs of the stipulation of facts submitted by both parties.

No amount of sophism, of mental gymnastics or logodaedaly may change the meanings and effects of the words placed by respondents themselves in said seven paragraphs. No amount of argument may delude anyone into believing that Senators Vera, Diokno, and Romero are not senators notwithstanding their having been proclaimed as elected senators, their having taken part in the election of the President of the Senate, their having taken their oaths of office, and their receiving salaries as senators.

Such a paradoxical proposition could have been driven into acceptance in the undeveloped brains of the pithecanthropus or gigantopithecus of five hundred millennia ago, but it would be unpardonably insulting to the human mind of the twentieth century.

Our conclusion is that Senators Vera, Diokno, and Romero should be counted as members of the Senate, without taking into consideration whatever legal effects the Pendatun resolution may have produced, a question upon which we have already elaborated in our opinion in *Vera vs. Avelino* (77 Phil., 192). Suspended or not suspended, they are senators anyway, and there is no way of ignoring a fact so clear and simple as the presence of the sun at day time. Therefore, counting said three Senators, there are 24 Senators in all in the present Senate.

96 REPRESENTATIVES

The next question raised by respondents is their denial of petitioners' allegations to the effect that the present House of Representatives is composed of 98 members and their own allegation to the effect that at present "only 90 members have qualified, have been fully sworn in, and have taken their seats as such."

Again respondents' allegations are belied by paragraphs eight to seventeen of the stipulation of facts.

The disagreement between the parties is as to whether or not Representatives Cando, Gustilo, Padilla, Santos, Taruc, Yuson, Lava and Simpauco, mentioned in paragraph 13 of the stipulation of facts, are members of the House of Representatives.

The facts stipulated by the parties proved conclusively that said eight persons are actual members of the House of Representatives. We may even add that the conclusiveness about said eight representatives is even greater than in

the case of Senators Vera, Diokno, and Romero, because no resolution of suspension has ever been adopted by the House of Representatives against said eight members, who are being deprived of the exercise of some of their official functions and privileges by the unipersonal, groundless, dictatorial act of the Speaker.

That illegal deprivation, whose counterpart can only be found in countries where the insolence of totalitarian rulers have replaced all constitutional guarantees and all concepts of decent government, raises again a constitutional question: whether it is permissible for the Speaker of the House of Representatives to exercise the arbitrary power of depriving representatives duly elected by the people of their constitutional functions, privileges, and prerogatives. To allow the existence of such an arbitrary power and to permit its exercise unchecked is to make of democracy a mockery.

The exercise of such an arbitrary power constitutes a wanton onslaught against the sovereignty itself of the people, an onslaught which may cause the people sooner or later to take justice in their own hands. No system of representative government may subsist if those elected by the people may so easily be silenced or obliterated from the exercise of their constitutional functions.

From the stipulation of facts, there should not be any question that at the last national election, 98 representatives were elected and at the time the resolution Exhibit B was adopted on September 18, 1946, 96 of them were actual members of the House, as two (Representatives Zulueta and Ramos) had resigned.

Applying the three-fourth rule, if there were 24 senators at the time the resolution was adopted; three-fourths of them should at least be 18 and not the 16 who only voted in favor of the resolution, and if there were 96 representatives, three-fourths of them should certainly be more than the 68 who voted for the resolution. The necessary consequence is that, since not three-fourths of the senators and representatives voting separately have voted in favor of the resolution as required by Article XV of the Constitution, there can be no question that the resolution has not been validly adopted.

We cannot but regret that our brethren, those who have signed or are in agreement with the majority opinion, have skipped the questions as to the actual membership of the Senate and House of Representatives, notwithstanding the fact that they are among the first important ones squarely raised by the pleadings of both parties. If they had taken them into consideration, it would seem clear that their sense of fairness will bring them to the same conclusion we now arrived at, at least, with respect to the actual membership of the House of Representatives.

Upon our conclusions as to the membership of the Senate and House of Representatives, it appears evident that the remedy sought for in the petition should be granted.

JURISDICTION OF THE SUPREME COURT

Without judging respondents' own estimate as to the strength of their own position concerning the questions of the actual membership of the Senate and House of Representatives, it seems that during the oral and in the written arguments they have retreated to the theory of conclusiveness of the certification of authenticity made by the presiding officers and secretaries of both Houses of Congress as their last redoubt.

The resolution in question begins as follows: "Resolved by the Senate and House of Representatives of the Philippines in joint session assembled, by a vote of not less than three-fourths of all the members of each House voting separately, * * *."

Just because the adoption of the resolution, with the above statement, appears to be certified over the signatures of the President of the Senate and the House of Representatives and the Secretaries of both Houses, respondents want us to accept blindly as a fact what is not. They want us to accept unconditionally as a dogma, as absolute as

a creed of faith, what, as we have shown, appears to be a brazen official falsehood.

Our reason revolts against such an unethical proposition.

An intimation or suggestion that we, in the sacred temple of justice, throwing overboard all scruples, in the administration of justice, could accept as true what we know is not and then perform our official functions upon that voluntary self-delusion, is too shocking and absurd to be entertained even for a moment. Anyone who keeps the minimum sense of justice will not fail to feel aghast at the perversion or miscarriage of justice which necessarily will result from the suggestion.

But the theory is advanced as a basis to attack the jurisdiction of this Court to inquire behind the false certification made by the presiding officers and the secretaries of the two Houses of Congress.

Respondents rely on the theory of, in the words of the majority opinion, "the conclusiveness on the courts of an enrolled bill or resolution."

To avoid repeating the arguments advanced by the parties, we have made part of this opinion, as Appendices A, B, and C,[1] the memoranda presented by both petitioners and respondents, where their attorneys appear to have amply and ably discussed the question. The perusal of the memoranda will show petitioners' contentions to be standing on stronger ground and, therefore, we generally agree with their arguments.

In what follows "we will try to analyze the positions taken in the majority opinion.

POLITICAL QUESTIONS

The majority enunciates the proposition that "political questions are not within the province of the judiciary," except "by express constitutional or statutory provision" to the contrary. Then argues that "a duly certified law or resolution also binds the judges under the 'enrolled bill rule' out of respect to the political departments."

The doctrine is predicated "on the principle of the separation of powers."

This question of separation of powers is the subject of discussion in the case of *Vera vs. Avelino*, supra. We deem unnecessary to repeat what we have already said in our opinion in said case, where we have elaborated on the question.

Although the majority maintains that what they call the doctrine that political questions are not within the province of the judiciary is "too well-established to need citation of authorities," they recognize the difficulty "in determining what matters fall under the meaning of political questions."

This alleged doctrine should not be accepted at its face value. We do not accept it even as a good doctrine. It is a general proposition made without a full comprehension of its scope and consequences. No judicial discernment lies behind it.

The confession that the "difficulty lies in determining what matters fall within the meaning of political question" shows conclusively that the so-called doctrine has recklessly been advanced.

This allegedly "well-established" doctrine is no doctrine at all in view of the confessed difficulty in determining what matters fall within the designation of political question. The majority itself admits that the term "is not susceptible of exact definition, and precedents and authorities are not always in full harmony as to the scope of the restrictions, on this ground, on the courts to meddle with the acts of the political department of the government."

Doctrine is that "which is taught; what is held, put forth as true, and supported by a teacher, a school, or a sect; a principle or position, or the body of principles, in any branch of knowledge; tenet; dogma; principle of faith." It is

a synonym of principle, position, opinion, article, maxim, rule, and axiom. In its general sense, doctrine applies to any speculative truth or working principle, especially as taught to others or recommended to their acceptance. Therefore, to be true, it should be expressed on simple and self-evident terms. A doctrine in which one of the elemental or nuclear terms is the subject of an endless debate is a misnomer and paradox.

A doctrine is advanced and accepted as an established truth, as a starting point for developing new propositions, as a guiding principle in the solution of many problems. It is a groundwork for the building of an intellectual system. It is the basis of a more or less complex legal structure. If not the cornerstone, it should at least be one of the main columns of an architectonic construction. If that groundwork, cornerstone or column is supported by a thing whose existence still remains in dispute, it is liable to fall.

We irrevocably refuse to accept and sanction such a pseudo-doctrine which is based on the unsettled meaning of political question.

The general proposition that "political questions are not within the province of the judiciary" is just one of the many numerous general pronouncements made as an excuse for apathetic, indifferent, lazy or uncourageous tribunals to refuse to decide hard or ticklish legal issues submitted to them.

It belongs to the category of that much-vaunted principle of separation of powers, the handful of sand with which judicial ostriches blind themselves, as if self-inflicted blindness may solve a problem or may act as a conjuration to drive away a danger or an evil.

We agree with the majority that the proposal to amend the Constitution and the process to make it effective, as provided in Article XV of the Constitution, are matters of political nature, but we cannot agree with their conclusion that a litigation as to whether said article has been complied with or violated is beyond the jurisdiction of the tribunals, because to arrive at this conclusion we must accept as a major premise the pseudo-doctrine which we have precisely exposed as erroneous and false.

Is there anything more political in nature than the Constitution? Shall all questions relating to it, therefore, be taken away from the courts? Then, what about the constitutional provision conferring the Supreme Court with the power to decide "all cases involving the constitutionality of a treaty or a law?"

COLEMAN versus MILLER

The decision of the United States Supreme Court in *Coleman vs. Miller* (122 A. L. R., 625) is invoked as the mainstay of the majority position.

No less than eight pages of the majority opinion are occupied by the exposition and analysis of the decision of the Supreme Court.

The case is invoked as authority for the conclusion that "the efficacy of ratification by the State legislature of a proposed amendment to the federal Constitution" and that "the decision by Congress, in its control of the Secretary of State of the questions of whether an amendment has been adopted within a reasonable time from the date of submission to the State legislature," are political questions and not justiciable.

At the outset it must be noted that the two above mentioned questions have no similarity or analogy with the constitutional questions herein discussed. The question as to the efficacy of the ratification by the Senate of Kansas of the Child Labor amendment proposed by the United States Congress in June, 1924, and upon the decision of said Congress, "in its control of the Secretary of State," whether the amendment has been adopted "within a reasonable time from the date of submission to the State legislature," either one of them does not raise a controversy of violation of specific provisions of the Constitution as the ones raised in the present case.

No specific constitutional provision has been mentioned to have been violated because in January, 1925, the Legislature of Kansas rejected the amendment, a copy of the rejection having been sent to the Secretary of State of the United States, and in January, 1927, a new resolution ratifying the amendment was adopted by the Senate of Kansas on a 21-20 division, the Lieutenant Governor casting the deciding vote. Neither was there such mention of constitutional violation as to the effect of the previous rejection and of the lapse of time after submission of the amendment to the State legislature.

No constitutional provision has been pointed out to have been violated because the Lieutenant Governor had cast his vote or because by the lapse of time from June, 1924 to March, 1927, the proposed amendment had allegedly lost its vitality.

It is only natural that, in the absence of a constitutional provision upon the efficacy of ratification by a State legislature of a proposed amendment, it was within the ultimate power of the United States Congress to decide the question, in its decision rendered in the exercise of its constitutional power, to control the action of the Secretary of State, and the promulgation of the adoption of amendment could not be controlled by the courts.

Evidently, the invoked authority has no bearing at all with the matters in controversy in the present case.

We note, as observed in the majority opinion, that the four opinions in *Coleman vs. Miller*, according to the American Law Reports, show "interestingly divergent but confusing positions of the justices," and are the subject of an amusing article in 48 Yale Law Journal, 1455, entitled "Sawing a Justice in Half," asking how it happened that the nine-member United States Supreme Court could not reach a decision on the question of the right of the Lieutenant Governor of Kansas to cast his vote, because the odd number of justices was "equally divided."

How such a "confusing" and "amusing" four-opinion decision in *Coleman vs. Miller* could be an authority is beyond our comprehension.

GREEN versus WELLER

One of the authorities upon which the majority relies is the decision of the Mississippi Supreme Court in *Green vs. Weller* (32 Miss., 650), quoting one paragraph thereof.

Here again we have a case of inapplicable authority, unless taken in its reversed effect.

The Mississippi Supreme Court maintains that there is nothing in the nature of the submission to the people of a proposal to amend the Constitution which should cause the free exercise of it to be obstructed or that could render it dangerous to the stability of the government, but in making this pronouncement, it assumes that the submission is made "in a established form," adding that the means provided for the exercise by the people of their sovereign right of changing the fundamental law should receive such a construction as not to trample upon the exercise of their right, and that the best security against tumult and revolution is the free and unobstructed privilege to the people of the state to change their Constitution "in the mode prescribed by the instrument."

So the authority, if clearly interpreted, will lead us to the conclusion that the majority position is wrong because the Mississippi Supreme Court, in making the pronouncement, upon the assumption that the submission to the people is made "in a established form" and "in the mode prescribed" by the Constitution, namely, in accordance with the provisions of the instrument, the pronouncements would be the opposite if, as in the present case, the submission of the proposal of amendment to the people is made through a process flagrantly violative of the Constitution, aggravated by wanton falsification of public records and tyrannical trampling of the constitutional prerogatives of duly elected representatives of the people.

MR. JUSTICE BLACK

The concurring opinion of Mr. Justice Black, joined in by Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Douglas, in the "confusing" and "amusing" decision in *Coleman vs. Miller*, is also invoked by the majority, but this other authority seems equally reluctant to offer its helping hand to a helpless, desperate position.

The major premise of the concurring opinion is as follows: "The Constitution granted Congress exclusive power to control submission of constitutional amendments."

Everybody ought to know that no such an unlimited, unchecked, omnipotent power is granted by our fundamental law to the Congress of the Philippines. Our Congress may propose amendments or call a convention to make the proposal, but that is all. Nowhere in the Constitution can be found any word, any grammatical sign, not even the faintest hint that in submitting the proposed amendments to the people. Congress shall have "exclusive power to control the submission." That submission must be provided by law, and no law may be enacted and come into effect by the exclusive power of Congress. It needs the concurring action of the President of the Philippines. And if the law happens to violate the fundamental law, courts of justice may step in to nullify its effectiveness. After the law is enacted, its execution devolves upon the Executive Department. As a matter of fact, it is the Executive Department which actually submits to the people the proposed amendment. Congress fixes the date of submission, but the President of the Philippines may refuse to submit it in the day fixed by law if war, rebellion, or insurrection prevents a plebiscite from proceeding.

After showing that Mr. Justice Black started his argument from a major premise not obtainable in the Philippines, his conclusions cannot help the majority in any way.

MR. JUSTICE FRANKFURTER

The concurring opinion of Mr. Justice Frankfurter in the "confusing" and "amusing" case of *Coleman vs. Miller* is the next authority invoked by the majority, but the opinion does not offer much help. The Justice maintains that the proceedings for voting in legislative assemblies "are matters that concern not merely political actions but are also of the very essence of political action," and then advances the following argument: "To open the law-courts to such controversies is to have courts sit in judgment on the manifold disputes engendered by procedures for voting in legislative assemblies."

The argument has no weight at all. The argument merely displays an attitude, one of simple distaste for the idea, but fails to give any sensible reason for the attitude. In a totalitarian regime, where decisions are rendered not in answer to the promptings of a sense of justice, but as expressions of moods, caprices and whims of arbitrary rulers, Mr. Justice Frankfurter's attitude could be taken as the law, but then it would be necessary to elevate him first to the category of a *fuehrer*.

In our jurisdiction personal attitudes are not the law. Here, justice must be founded on reason, but never on passing unreasoned moods, judicial or otherwise.

We regret that we cannot agree with the majority's sharing Mr. Justice Frankfurter's views, which in their judgment are in accord "with sound principles of political jurisprudence and represent liberal and advanced thought on the workings of constitutional and popular government." Our regret is not for ourselves alone but for those who happen to accept as authority the unreasoned and unexplained mental attitude of a judicial officer of a foreign country, praising it even with the much-abused label as "liberal," notwithstanding the fact that it represents the whimsical rule of personal attitudes and not the rule of well-matured reason.

THE ENROLLED BILL THEORY

This theory is amply discussed in the memoranda of the parties attached hereto as Appendices A, B, and C. Although we consider it unnecessary to enlarge the discussion, we deem it convenient to make a little analysis of what is stated in the majority opinion. Respondents contend, with the full approval of the majority, that a duly authenticated bill or resolution imports absolute verity and is binding on the courts.

The present case is a conclusive evidence of the absurdity of the theory. How can we accept the absolute verity of the presiding officers' certification that the resolution in question has been adopted by three-fourths of all the members of the Senate and of the House of Representatives, when as a matter of undisputable fact the certification is false? How can we accept a theory which elevates a falsehood to the category of truth?

The majority alleges that the rule is the one prevailing in England. Because the English have committed the nonsense of accepting the theory, is that reason for Filipinos to follow suit? Why, in the administration of justice, should our tribunals not think independently? Our temple of justice is not presided by simians trained in the art of imitation but by human beings, and human beings must act according to reason, never just to imitate what is wrong, although such mistakes may happen to be consecrated as a judicial precedent. It would be inconceivable for our courts to commit such a blunder.

Repeating what Wigmore has said (4 Wigmore on Evidence, 685, footnote), the majority states that in the United States the jurisdictions are divided almost equally pro and con on the theory, although in petitioners' memorandum Appendix A there appears more up-to-date evidence to the effect that there is a great majority for the rejection. But to our mind, mere numbers as to pro and con seem to us immaterial in the decision as to whether the theory is or is not correct. Numbers do not make reason nor justice.

The majority contends that the theory conforms to the express policy of our law-making body, invoking to said effect the now obsolete section 313 of the old Code of Civil Procedure, as amended by Act No. 2210.

Even if we should follow the anachronistic practice of deciding issues upon the authority of laws which have been repealed or abolished, still the evidence pointed out by the majority does not support their contention. Section 313 alluded to enumerates the evidence that may prove the procedures of the defunct Philippine Commission or of any legislative body that may be provided for in the Philippines, with the proviso that the existence of a copy of acts of said commission or the Philippine Legislature, signed by the presiding officers and secretaries of said bodies, is a conclusive proof "of the provisions of such acts and of the due enactment thereof."

This proviso has been repealed by its non-inclusion in the Rules of Court. Sections 5 and 41 of Rule 123 show conclusively that this Supreme Court, in making the rules effective since July 1, 1940, rejected the proviso as unreasonable and unjust. Section 5 provides that we may take judicial notice of the official acts of Congress and section 41 provides what evidence can be used to prove said official acts, but nowhere in the rules can a provision be found that would make conclusive a certification by the presiding officers and secretaries of both Houses of Congress even if we know by conclusive evidence that the certification is false.

The allegation that the theory in question conforms to the express policy of our lawmaking body, upon the very evidence used in support thereof, after a little analysis, has to banish as a midsummer night's dream.

50 AMERICAN JURISPRUDENCE, SECTION 150

In support of the theory of conclusiveness of the enrollment, the authority of 50 American Jurisprudence, 150 is invoked as reasons for the theory.

We will analyze the reasons adduced:

- Respect due to a coequal and independent department of the government. This must be the strongest one, when it is first mentioned. It is so flimsy to require much discussion. Shall we sacrifice truth and justice for the sake of a social courtesy, the mutual respect that must be shown between different departments of the government? Has our sense of evaluation of spiritual values become so perverted that we can make such a blunder in our choice? Since when have the social or official amenities become of paramount value to the extent of overshadowing the principles of truth and justice?
- Because without the theory, courts would have to make "an inquisition into the conduct of the members of the legislature, a very delicate power." This second reason is premised not on a democratic attitude, but rather on a Fascistic one. It is premised on the false belief that the members of the majority are a kind of emperors of Japan, to be worshipped but never to be discussed. The ideology depicted by the second reason should be relegated to where it belongs: the archeological museum.
- "The rule is also one of convenience." This reason again shows a perverted evaluation of human values. Is justice to be sacrificed for the sake of convenience?
- "Otherwise after relying on the prima facie evidence of the enrolled bills authenticated as executed by the Constitution, for years, it might be ascertained from the journals that an act heretofore enforced had never become a law." This last reason personifies unreasonableness to the nth degree. So we leave it as it is, as a perpetual evidence of the extent to which legal stupidity may reach.

WIGMORE ON EVIDENCE

Now let us examine the arguments of the next authority invoked by the majority, Wigmore on Evidence. We will also analyze the arguments relied upon.

- That to go beyond the enrolled bill "would unsettle the entire statute law of the State." This argument, as it appears quoted in the majority decision, is premised on the unreliability of legislative journals, and it seems to depict a mind poisoned by prejudice, as shown by the following: "We are to remember the danger, under the prevalence of such a doctrine, to be apprehended from the intentional corruption of evidences of this character. It is scarcely too much to say that the legal existence of almost every legislative action would be at the mercy of all persons having access to these journals. * * *"

The argument should be taken into consideration in connection with American experience, which seems not to be too flattering to our former metropolis.

Our own personal experience of more than a decade in legislative processes convinces us that Wigmore's assumption does not obtain in the Philippines. It is true that in the pre-constitution legislative enactments we have seen few instances in which there had been disagreement between what has actually been passed, as shown by the journal, and the authenticated enrolled bill. But the instances were so few to justify entertaining here the same fears entertained by Wigmore in America. Although those instances were few, we fought to correct the evil in the Constitutional Convention, where we were able to introduce the following revolutionary provision in the Constitution: "No bill shall be passed by either House unless it shall be printed and copies thereof in their final form furnished each member at least three calendar days prior to its passage, except when the President shall have certified to the necessity of its immediate enactment. Upon the last reading of a bill no amendment thereof shall be allowed, and the question upon its passage shall be taken immediately thereafter, and the yeas and nays entered in the journal." (Section 21 [2], Article VI of the Constitution.)

This provision is an effective guarantee against the situation depicted by Wigmore's fears.

- To the argument that if the authenticated roll is conclusive upon the courts, then less than a quorum of each House may by the aid of presiding officers impose laws upon the State in defiance of the inhibition of the Constitution, Wigmore answers: "This perhaps cannot be avoided absolutely. But it applies also to all human agencies. It is not fit that the judiciary should claim for itself a purity beyond all others; nor has it been able at all times with truth to say that its high places have not been disgraced."

The answer is unconvincing. Because there can be and there have been blundering, disgraceful, or corrupt judicial officers is no reason why arbitrary presiding officers and members of the legislature should be allowed to have their way unchecked. Precisely the system of checks and balances established by the Constitution presupposes the possibility of error and corruption in any department of government and the system is established to put a check on them.

When the question of an unconstitutional, arbitrary or corrupt action by the legislature is placed at the bar of justice, the judiciary must not shrink from its duty. If there is corruption in the judiciary, our laws provide the proper remedy. Even we, the members of the highest tribunal, cannot with impunity commit "culpable violation of the Constitution, treason, bribery, or other high crimes" without being liable to be removed from office on impeachment, and we hope, if there is such a case, that the House of Representatives and the Senate will do their duty in accordance with Article IX of the Constitution, and not follow the uncourageous example which is given under the intellectual tutelage of Wigmore.

THE CONSTITUTIONAL NUMERICAL RULES

The three-fourth rule has been provided in Article XV of the Constitution as a guarantee against the adoption of amendments to the fundamental law by mere majorities.

The Constitution must be accorded more stability than ordinary laws and if any change is to be introduced in it, it must be in answer to a pressing public need so powerful as to sway the will of three-fourths of all the members of the Senate and of the House of Representatives. Said three-fourth rule has been adopted by the Constitutional Convention, as all the other numerical rules, with the purpose of avoiding any doubt that it must be complied with mathematical precision, with the same certainty of all numbers and fractions expressed or expressible in arithmetical figures.

Where the Constitution says three-fourths of all the members of the Senate and of the House of Representatives voting separately, it means an exact number, not susceptible of any more or less. All the members means that no single member should be excluded in the counting. It means not excluding three Senators and eight Representatives as respondents want us to do in order not to cause any inconvenience to the presiding officers and secretaries of both Houses of Congress who had the boldness of certifying that the three-fourth rule had been complied with in the adoption of the resolution in question, when such a certification is as false as any falsehood can be.

The three-fourth rule must not be left to the caprice of arbitrary majorities, otherwise it would be the death knell of constitutionalism in our country. If a constitutional provision can be so trifled with, as has happened in the adoption of the resolution in question, it would mean breaking faith with the vitality of a government of laws, to enthrone in its stead a whimsical government of men.

The Constitution contains several numerical provisions. It requires that the Senate shall be composed of 24 Senators (section 2, Article VI); that Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise (section 5, Article VI); that each House may expel a member with

the concurrence of two-thirds of all the members (section 10 [3], Article VI); that electoral tribunals shall each be composed of nine members, three Justices of the Supreme Court and six legislative members (section 11, Article VI); that to overrun the veto of the President, the concurrence of two-thirds of all the members of each House is necessary (section 20 [1], Article VI), and in certain cases the concurrence of three-fourths of all the members of each House is necessary (section 20 [2], Article VI); that Congress shall, with the concurrence of two-thirds of all the members of each House, have the sole power to declare war (section 25, Article VI); that no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Supreme Court (section 10, Article VIII); that the House of Representatives shall have the sole power of impeachment by a vote of two-thirds of all its members (section 2, Article IX); and that the Senate shall have the sole power to try all impeachments, but no person shall be convicted without the concurrence of three-fourths of all the members of the Senate (section 3, Article IX).

So it can be seen that the numerical rules inserted in the Constitution affect matters not of momentary but of momentous importance. Each and every one of them should be given effect with religious scruple, not only because our loyalty to the sovereign people so requires, but also because by inserting them the Constitutional Convention had abided by the wise teachings of experience.

By denying the petition and allowing those responsible for the unconstitutional adoption of the resolution in question to have their way is to set up a precedent that eventually may lead to the supremacy of an empire of lawlessness. It will be tantamount to opening Pandora's box of evils and disasters.

The power to declare war can only be exercised by Congress with the concurrence of two-thirds of all the members of each House. From now on, by the simple expediency of certification by the presiding officers and secretaries of both Houses that two-thirds had voted where a bare majority had voted in fact, said majority may plunge our people into a maelstrom of war.

The Constitution provides that the power of impeachment needs the vote of two-thirds of all the members of the House of Representatives. From now on, a mere plurality of one will be enough to put impeachable high officials, including the President, on the carpet.

To convict an impeached officer the fundamental law requires the concurrence of three-fourths of all the members of the Senate. From now on, that three-fourth rule may be dispensed with or circumvented by not counting three actual Senators, as has been done in the resolution in question, and thereby oust the President of the Philippines if he happens not to be in the good graces of a senatorial majority.

Without entering into the merits of the proposed constitutional amendment, to submit which to the people high-handed means have been resorted to, there can be no question that it is of vital importance to the people and it will affect future generations to unimaginable extent. The Constitutional Convention had thought it wise that before such a momentous proposal could be submitted to the people the three-fourth rule should be adhered to by Congress.

QUOTATION FROM THE JALANDONI CASE

Months ago we stated: "It is high time to sound the clarion call that will summon all the forces of liberalism to wage a crusade for human freedom. They should put on the armor of righteousness and rally behind the banner for the vindication of the principles and guarantees embodied in the Constitution and the high purposes of the Chapter of the United Nations." This, we said in our dissenting opinion in *People vs. Jalandoni*, L-777. Concerning the judgment that the future may pass upon the actuations of the Supreme Court, in that same opinion we ventured that the historian may, under the heading of "Epoch of Great Reaction," write as follows:

"At no epoch of its history has the Supreme Court shown to be most reactionary and retrogressive. When the victims of a constitutional violation, perpetrated by a group of the highest officials of the government, came to it for redress, it adopted a hands-off policy, showing lack of the necessary vitality to grapple with the situation and finding refuge in a comfortable retreat, completely disappointing those who have pinned their faith and hope in it as the first pillar of the Constitution and the inexpugnable bulwark of human fundamental rights. The issue of human freedom was disposed of by them most discouragingly by nullifying the right of an accused to be free on bail on appeal, in flagrant violation of a constitutional guarantee and of one of the fundamental purposes and principles of the Charter of the United Nations."

Upon touching the decision of this Court in the instant case, the same historian may record that the highest tribunal of the new Republic of the Philippines has struck the hardest blow to the Philippine constitutional system, by refusing to do its duty in giving redress in a clear case of violation of the fundamental law, to the great disappointment, despair and apallment of millions of souls all over the world who are pinning their hopes on constitutionalism for the survival of humanity.

The ideal of one world oftenly enunciated by progressive leaders in the deliberations of the several organs of the United Nations is predicated in the adoption of a single standard of laws, compulsory within all jurisdictions of our planet. The ethology of all mankind must be shaped under the pattern of that single legal standard. But the whole system is liable to crash if it is not founded on the rockbed of the elemental principle that the majesty of the law must always be held supreme.

To keep inviolate this primary principle it is necessary that some of the existing social organs, moral attitudes and habits of thinking should undergo reforms and overhauling, and many fixed traditional ideas should be discarded to be replaced with more progressive ones and in consonance with truth and reason. Among these ideas are the wrong ones which are used as premises for the majority opinion in this case.

The role of innovators and reformers is hard and often thankless, but innovation and reform should continuously be undertaken if death by stagnation is to be avoided. New truths must be discovered and new ideas created. New formulas must be devised and invented, and those outworn discarded. Good and useful traditions must be preserved, but those hampering the progressive evolution of culture should be stored in the museum of memory. The past and the present are just stopping stones for the fulfilment of the promises of the future.

Since the last decade of the nineteenth century, physical science has progressed by leaps and bounds. Polonium and radium were discovered by Madam Curie, Rontgen discovered the X-ray, and Rutherford the alpha, beta and gamma particles. Atom ceased to be the smallest unit of matter to become an under-microscopic planetarian system of neutrons, protons, and electrons.

Ion exchangers are utilized to make of electrons veritable lamps of Aladdin. Plants are grown in plain water, without any soil, but only with anions and cations. Sawdust has ceased to be a waste matter, and from it is produced wood sugar, weighing one-half of the sawdust processed. Inter-stellar space vacuum, almost absolute, is being achieved to serve ends that contribute to human welfare. Bacteria and other microbes are harnessed to serve useful human purposes. The aspergillus niger is made to manufacture the acetic acid to produce vinegar for the asking. The penicillum notatum and the bacillus brevis are made to produce penicillin and tyrothricin, two wonder drugs that are saving many lives from formerly lethal infections. DDT decimates harmful insects, thus checking effectively malaria, an illness that used to claim more than one million victims a year in the world. The creation of synthetics has enriched the material treasures offered to man by nature. Means of transportation are developed to achieve supersonic speeds. Many scientific dreams are fast becoming marvelous realities. Thus, science marches on. There is no reason why the administration of justice should not progress onward, synchronized with the rhythm of general human advancement towards a better future.

The fact that the majorities of the two chambers of Congress have without any qualm violated Article XV of the Constitution and the majority of this Court, instead of granting the proper relief provided by law, preferred to adopt the comfortable attitude of indifferent by-standers, creates a situation that seems to be ogling for more violations of the fundamental law. The final results no one is in a position to foresee.

Our vote is for the granting of the petition.

[1] Omitted.

DISIDENTE

BRIONES, M., con quien esta conforme FERIA, M.:

Por segunda vez en menos de un año nos llaman a decidir y arbitrar sobre una violacion de la Constitucion—el codigo fundamental de nuestro pais. A mediados del año pasado se trataba del recurso interpuesto ante esta misma Corte Suprema por tres Senadores[1] que se quejaban de haber sido privados injusta y arbitrariamente de su derecho a sentarse en el Senado de Filipinas y a participar y votar en sus deliberaciones, con grave infraccion y detrimento de la Constitucion que ampara tal derecho. Ahora esos mismos Senadores acuden de nuevo a esta Corte para quejarse de otra violacion de la Constitucion, pero esta vez no vienen solos: les acompañan otros cinco miembros del Senado, diecisiete miembros de la Camara de Representantes y tres jefes de agrupaciones o partidos politicos—Democratic Alliance, Popular Front y Philippine Youth Party. Jose O. Vera es recurrente en su doble capacidad de miembro del Senado y Presidente del Partido Nacionalista. De modo que los recurrentes suman veintiocho: 8 Senadores, 17 Representantes y 3 particulares.[2] Tienen un comun denominador, a saber: que son todos ciudadanos de Filipinas, y, ademas, contribuyentes y electores.

Los recurridos son el Presidente y miembros de la Comision de Elecciones, el Tesorero de Filipinas, el Auditor General y el Director del Buro de Imprenta.[3]

El objeto del recurso es recabar de esta Corte un mandamiento de prohibicion dirigido a los recurridos para que estos, sus agentes, empleados, subordinados y otras personas que actuen bajo su superintendencia o en su nombre "se abstengan y desistan de dar los pasos tendentes hacia la celebracion de un plebiscito o eleccion general el 11 de Marzo, 1947, y de imprimir la resolucion (sobre reforma de los articulos 13.º y 14.º de la Constitucion), las balotas y otros papeles necesarios en relacion con dicho plebiscito, y de desembolsar o de autorizar el expendio de fondos publicos para dicho proposito."

Para la mejor comprension del asunto estimo necesario publicar integro a continuacion el texto de la Resolucion conjunta que contiene la propuesta reforma a la Constitucion, resolucion que constituye la materia u objeto de la consulta popular en el referido plebiscito de 11 de Marzo, y es la misma que en el lexico corriente de la prensa y del publico se conoce por resolucion sobre paridad o igualdad de derechos constitucionales a favor de los americanos, es decir, que concede a estos iguales derechos que a los filipinos en la propiedad y cultivo de terrenos publicos, en la explotacion de nuestros recursos naturales como bosques, minas, pesca y fuerza hidraulica, y en la propiedad y operacion de utilidades publicas. He aqui su texto:

"RESOLUTION OF BOTH HOUSES PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE PHILIPPINES TO BE APPENDED AS AN ORDINANCE THERETO.

"Resolved by the Senate and House of Representatives of the Philippines in joint session assembled, by a vote of not less than three-fourths of all the Members of each House voting separately, To propose, as they do

hereby propose, the following amendment to the Constitution of the Philippines to be appended as an Ordinance thereto;

"ORDINANCE APPENDED TO THE CONSTITUTION

"Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

"This amendment shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election at which it is submitted to the people for their ratification pursuant to Article XV of the Constitution.

"Adopted,

(Sgd.) "JOSE AVELINO

"President of the Senate

(Sgd.) "EUGENIO PEREZ

"Speaker of the House of

Representatives

"We hereby certify that the foregoing Resolution was adopted by both Houses in joint session assembled in the Hall of the House of Representatives on September 18, 1946.

(Sgd.) "ANTONIO ZACARIAS

"Secretary of the Senate

(Sgd.) "NARCISO PIMENTEL

"Secretary of the House

of Representatives"

Para comprobar la voluntad popular sobre la reforma constitucional propuesta el Congreso de Filipinas ha aprobado la Ley No. 73 de la Republica que dispone y ordena la celebracion de un plebiscito para el 11 de Marzo de este año, provee a la forma de celebrarlo y consigna el presupuesto necesario para sufragar los gastos del mismo. Si una mayoría de los electores votare afirmativamente, la reforma quedara ratificada y estara en vigor por un periodo de 28 años; en caso contrario, quedara rechazada.

Los recurrentes alegan y sostienen que la resolucion conjunta de que se trata es ilegal y nula por no haberse aprobado con los votos de las tres cuartas-partes ($\frac{3}{4}$) del Congreso, conforme a lo provisto en el Artículo XV de la Constitucion, a saber:

"SECTION 1. The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."

Se alega que cuando se considero y aprobo la citada Resolucion conjunta el Senado se componia actualmente de 24 miembros, es decir, el numero exacto fijado en la Constitution, y la Camara de Representantes de 96 miembros, es decir, dos menos que el numero señalado en la Constitucion, pues dos dimitieron despues de las elecciones, uno para aceptar un cargo en el ramo ejecutivo del gobierno y otro para aceptar un nombramiento en el servicio diplomatico. Sin embargo, segun la demanda de los recurrentes, en el Senado solo se permitio votar a 21 miembros, excluyendose de las deliberaciones y votacion final de la Resolucion a tres miembros, a saber: los Senadores Vera, Diokno y Romero. De los referidos 21 miembros, votaron a favor de la Resolucion 16 y en contra 5; asi que—arguyen los recurrentes—la Resolucion no quedo aprobada, por parte del Senado, con el numero constitucional de tres cuartas-partes ($\frac{3}{4}$) de los miembros, el cual debia ser 18.

En la Camara de Representantes, segun los recurrentes, solo se permitio votar a 88 miembros, excluyendose de las deliberaciones y votacion final de la resolucion a 8 miembros, a saber: Representantes Alejo Santos y Jesus B. Lava, de Bulacan; Reps. Jose Cando y Constancio P. Padilla, de Nueva Ecija; Reps. Amado M. Yuson y Luis Taruc, de Pampanga; Rep. Alejandro Simpauco, de Tarlac; y Rep. Vicente F. Gustilo, de Negros Occidental. De los referidos 88 miembros votaron a favor de la Resolucion solo 68; asi que—arguyen los recurrentes—la Resolucion tampoco quedo aprobada, por parte de la Camara, con el numero constitucional de tres cuartas-partes ($\frac{3}{4}$) partes de sus miembros, el cual debia ser 72, por lo menos, y no 68, aun dando por descontados los dos miembros que despues de las elecciones aceptaron cargos en otros ramos del gobierno.

Siendo inconstitucional y nula la Resolucion basica de que se trata, consiguientemente los recurrentes tachan tambien de inconstitucional e invalida la referida Ley de la Republica No. 73 que convoca una eleccion general o plebiscito para el 11 de Marzo de 1947 a fin de someter al pueblo para su ratificacion o repudio la enmienda constitucional propuesta, y que consigna la suma de P1,000,000 para los gastos en que se hubiere de incurrir con motivo de la celebracion de dicho plebiscito, entre habilitacion de precintos electorales, pago de dietas de los inspectores y costo de la impresion, publicacion, fijacion y distribucion gratuita de copias de la propuesta enmienda en ingles, español y otros dialectos del pais.

Los recurridos, despues de admitir ciertas alegaciones esenciales de la demanda y negar otras, plantean las siguientes defensas especiales:

Primera defensa especial: que una ley o resolucion impresa (enrolled Act or Resolution) de ambas Camaras del Congreso, adverada o autenticada con las firmas de los Presidentes de dichas Camaras, es prueba concluyente de que la misma fue aprobada por el Congreso; que, en virtud del respeto que se debe a un ramo igual y coordinado del gobierno, no es permisible una investigacion judicial de si la misma fue o no aprobada debida y propiamente por el Congreso; y que, por tanto, esta Corte, Suprema carece de jurisdiccion para conocer y enjuiciar los puntos suscitados por los recurrentes en relacion con la validez y constitucionalidad de la resolucion en cuestion.

Empero si la primera defensa especial no fuese sostenida, los recurridos alegan, por via de segunda defensa especial, que la resolucion controvertida fue aprobada con los votos de tres cuartas-partes ($\frac{3}{4}$) de todos los miembros cualificados del Senado y de la Camara de Representantes votando separadamente, en consonancia con el Artículo XV, apartado 1, de la Constitution, y que consiguientemente la ley de la Republica No. 73 que ordena su planteamiento ante el pueblo para su ratificacion o desaprobacion, señala una fecha para la celebracion de esta consulta plebiscitaria y consigna fondos publicos para tal fin, es valida y constitucional.

Consta en autos una estipulacion de hechos concertada entre las partes, pero no se extracta aqui para no alargar innecesariamente esta disidencia, pero se hara particular referencia a ella mas adelante a medida que las exigencias de la argumentacion lo demanden.

Es preciso hacer constar que los abogados de ambas parses han hecho cumplida justicia a la tremenda importancia del asunto haciendo extensos estudios y pacientes investigaciones de la jurisprudencia pertinente, en particular la americana, teniendo en cuenta la influencia profunda y decisiva de aquel pais en nuestras ideas politicas y constitucionales en virtud de la historica y estrecha convivencia de casi medio siglo.

Es que la cosa no era para menos. Puede decirse, sin exageracion, que excepto en cuatro momentos culminantes de su historia—el primer grito de rebelion contra España en Agosto de 1896, la ruptura de hostilidades contra America en Febrero de 1899, la aceptacion de la Ley de Independencia en el plebiscito nacional de 1935, y la guerra contra el Japon en 1941—en ningun momento, en los ultimos 60 años, ha sido llamado el pueblo filipino a rendir una decision tan importante, de trascendencia e implicaciones tan graves, tan tremendas, como la que tiene que hacer en el plebiscito de 11 de Marzo proximo con motivo de la Resolucion congresional discutida en el presente asunto.

Es una de esas decisiones que hacen historia; que para bien o para mal sacuden los cimientos de un pais tal que si fuese un fenomeno cosmico; que determinan el curso de su existencia y destinos nacionales; que deciden, en una palabra, de la suerte de generaciones ya existentes y de generaciones que no han nacido toda via. Es una de esas decisiones que para hacerla los pueblos deben hincarse humildemente de rodillas, de cara al cielo, pidiendo al Dios de los pueblos y naciones la gracia de una salvadora inspiracion de Su infinita sabiduria * * *.

II

Para los efectos de una amplia perspectiva historica que permita destacar en toda su plenitud los contornos de los formidables "issues" o puntos constitucionales debatidos en el presente asunto, parece conveniente que repasemos, siquiera brevemente (en las notas marginales lo que no cabe en el mismo texto de esta disidencia),^[1] los preceptos basicos de la Constitucion que se trata de reformar con la Resolucion congresional de que tantas veces se ha hecho merito. Helos aqui:

"ARTICLE XIII.—CONSERVATION AND UTILIZATION OF NATURAL RESOURCES

"SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

ARTICLE XIV.—GENERAL PROVISIONS

* * * * *

"SEC. 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such

franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires."

Como queda dicho, la reforma propuesta es en el sentido de que, no obstante lo dispuesto en los preceptos arriba transcritos, "durante la efectividad del Convenio Ejecutivo perfeccionado entre el Presidente de Filipinas y el Presidente de los Estados Unidos el 4 de Julio de 1946, al tenor de las disposiciones de la Ley del Commonwealth No. 733, pero que en ningun caso se extendiera mas alla del 3 de Julio de 1974, la disposicion, explotacion, desarrollo y utilizacion de todos los terrenos agricolas, forestales y minerales de dominio publico, de aguas, minerales, carbon, petroleo y otros minerales petroliferos, de todas las fuerzas y fuentes de energia potencial, asi como de otros recursos de Filipinas, y la operacion de utilidades publicas, si abiertos para cualquier persona, quedan abiertos para los ciudadanos de los Estados Unidos y para todas las formas de negocio y empresa de la propiedad o controladas, directa o indirectamente, por ciudadanos de los Estados Unidos, de la misma manera y bajo las mismas condiciones impuestas a los ciudadanos de Filipinas o a las corporaciones o asociaciones de la propiedad o controladas por ciudadanos de Filipinas (Resolucion conjunta del Congreso filipino, supra).

Podemos tomar conocimiento judicial—pues, sobre ser historia contemporanea, se trata de las labores y procesos deliberativos de la misma Asamblea Constituyente—de que los preceptos capitales arriba transcritos constituyen la expresion acabada de toda la madurez de juicio, de toda la prudencia y sabiduria de que eran capaces no solo los autores de la Constitucion y los Delegados que la aprobaron, sino el pueblo filipino que la ratifico en el correspondiente plebiscito nacional convocado al efecto. En pocas resoluciones ha habido tanta firmeza y tan fuerte unanimidad entre nuestros partidos politicos y sus caudillos como en esa recia y constructiva afirmacion de nacionalismo. Nada mejor, creo yo, que las siguientes palabras para definir el espiritu, la filosofia que informa esas provisiones:

"This provision of the Constitution has been criticized as establishing the outworn Regalian doctrine which, it is suggested, may serve to retard the economic development of the Philippines. The best encomium on this provision is probably the very criticism launched against it. It is inconceivable that the Filipinos would liberalize the acquisition, disposition and exploitation of our natural resources to the extent of permitting their alienation or of depriving the people of this country of their heritage. The life of any nation depends upon its patrimony and economic resources. Real freedom, if it is to be lasting, must go hand in hand with economic security, if not economic prosperity. We are at most usufructuaries of our domains and natural resources and have no power to alienate them even if we should want to do so. They belong to the generations yet unborn and it would be the height of folly to even think of opening the door for their untrammelled disposition, exploitation, development or utilization to the detriment of the Filipino people. With our natural resources in the hands of foreigners what would be there left except the idealism of living in a country supposedly free, but where freedom is, after all, an empty dream? We would be living in a sumptuous palace that is not ours! We would be beggars in our own homes, strangers in our own land!

"Friendship and amity towards all nations are compatible with the protection of the legitimate interests of the Filipino people. There is no antagonism or hostility towards foreigners but sane nationalism and self-protection which every country of the world is practising today in the interest of self-preservation." (The Three Powers of Government, by Laurel, pp. 117, 118.)

Los criticos de la enmienda constitucional propuesta pueden discutir libremente, como cumple a los ciudadanos de un pais democratico, los meritos y demeritos de la misma. Pueden combatirla con toda clase de razones—morales, politicas, economicas, financieras, internacionales, y hasta de decencia—y naturalmente defenderla tambien sus partidarios desde todos los angulos. Podrian los opositores hacer una minuciosa diseccion de su fraseologia y acaso hallar en sus repliegues peligrosas implicaciones, posibles riesgos, como en ese par de adverbios "directa o

indirectamente", a cuyo socaire podrian acogerse corporaciones o asociaciones extranjeras controladas solo indirectamente por ciudadanos americanos para concurrir en la explotacion de nuestros terrenos publicos y recursos naturales, y en la operacion de utilidades piiblicas. Todo esto lo pueden hacer, y algo mas. Pero es obvio, elemental que semejante discusion no compete a esta Corte Suprema, sino en todo caso a otros poderets constituidos.

Nosotros no estamos para determinar y enjuiciar la bondad o maldad de la enmienda propuesta. Lo unico que nos incumbe hacer, ya que la cuestion se halla propiamente planteada ante nosotros, es resolver si la enmienda ha sido aprobada por el Congreso de acuerdo con el mandato expreso de la Constitucion en materia de enmiendas; si los requisitos que la Constitucion señala para poder enmendarla—requisitos que son mandatorios, categoricamente imperativos y obligatorios—se han cumplido o se han violado. Como se dijo bien en el asunto de Gray vs. Childs ([1934], 156 So., 274, 279), "* * * No podemos decir que el estricto requerimiento relativo a las enmiendas se puede renunciar a favor de una buena enmienda e invocar en contra de otra mala. * * * No compete a los tribunales el determinar cuando una enmienda propuesta es sabia y cuando no lo es. Los tribunales nada tienen que ver con la sabiduria de la politica. Pero es deber de los tribunales, cuando se les pide que lo hagan, el determinar si o no el procedimiento adoptado para la aprobacion de la enmienda es el señalado por los terminos de la ley organica."

Todo lo que se ha dicho hasta aqui para poner de relieve la filosofia de nuestra Constitucion en materia de recursos naturales y utilidades publicas, se ha dicho no como expresion de un criterio propio, sino tan solo para subrayar toda la gravedad, toda la densidad del asunto, y prevenir en todo caso los peligros de una rutinaria y complaciente liviandad. Como tambien se dijo en el citado asunto de Gray vs. Childs, "la enmienda de la ley organica del Estado o nacion no es una cosa para ser tomada ligeramente, ni para ser hecha de lance o al azar. Es una cosa seria. Cuando la enmienda es aprobada, viene a ser parte de la ley fundamental del pafs y puede significar el bienestar o maldicion de las generaciones de la nacion donde se hace parte del codigo fundamental."

Este pronunciamiento adquiere todo el valor y toda la resonancia de una consigna en el presente caso en que la reforma propuesta afecta vitalisimamente al patrimonio nacional del pueblo filipino. ¿No son los recursos naturales y las utilidades publicas el tesoro de una nacion, la base que sustenta su existencia, la espina dorsal de su economia? Por tanto, jamas se podra exagerar el celo, la vigilancia que el pueblo y sus organos naturales ejercen para que las salvaguardias impuestas por la misma Constitucion en relacion con el proceso y tramitacion de toda enmienda constitucional se cumplan y observen con el maximo rigor.

Aqui no caben excusas ni subterfugios. Ni siquiera cabe escudarse tras la doctrina de la separacion de poderes que la mayoria de esta Corte invoca para justificar su inaccion, su pasividad, su politica de "manos fuera", alegando que el presente asunto es coto vedado para nosotros, algo que cae fuera de nuestra jurisdiccion, eso que en derecho politico y constitucional se llama materia politica no-justiciable.

III

La mayoria rehusa asumir jurisdiccion sobre el presente caso porque dice que versa sobre una cuestion politica, y las cuestiones politicas caen fuera de la competcncia de los tribunates de justicia. Creo que esto es un error, dicho sea con todos los respetos debidos a mis ilustres compañeros que sostienen tal opinion. ¿Hay acaso algun documento mas politico que la Constitucion? Si la opinion de la mayoria fuese valida y acertada, practicamente ninguna violacion de la Constitucion podria ser enjuiciada por los tribunales, pues cual mas, cual menos, casi todas las transgresiones constitucionales, sobre todo las que comete el poder legislativo o el poder ejecutivo, tienen caracter politico. Bajo esa opinion la Constitucion seria una letra muerta, un simple pedazo de papel: los poderes constituidos, los individuos que los componen, podrian infringir impunemente la Constitucion sin que

ningun arbitro constitucional pudiera intervenir ordenadamente para restaurar la suprema majestad de la ley fundamental violada. Es claro que esto podria conducir facilmente al caos, a la anarquia, a la revolucion, dependiendo solo el resultado de la mayor o menor docilidad del pueblo, del grado de elasticidad politica de las masas. Y es claro que ninguno puede querer este triste destino para nuestro pais.

Creo sinceramente que una mejor y mas correcta evaluacion de nuestro sistema de gobierno que esta esencialmente calcado en el americano, es que bajo la teoria relativa de la separacion de poderes, ningun poder es superior al pueblo cuya voluntad esta encarnada en la Constitucion. Los poderes no son mas que agentes, mandatarios, servidores: el pueblo es el amo, el mandante, el soberano. Y el pueblo ordena y manda por medio de la Constitucion—esta es su voz el verbo hecho carne politica y social, el soplo vital que traduce y transmuta su espiritu en postulados esenciales de regulacion y gobierno.

Todo eso esta bien, no puede haber seria objecion a ello, dicen los sostenedores absolutistas de la teoria de la separacion de poderes. Pero se pregunta: ¿quien señala la voluntad del pueblo tal como esta plasmada en la Constitucion? ¿Quien es el profeta que desciende del Sinai para revelar las tablas de la ley? ¿Quien ha de arbitrar en los conflictos constitucionales, o quien ha de decidir los litigios propiamente planteados en que se ventilan una infraccion de la Constitucion? ¿Hay un peligroso vacio en nuestro mecanismo constitucional, o por el contrario, los resortes estan todos bien situados, capaces de operar y funcionar adecuada y eficientemente? Esto es precisamente el busilis, la cuestion batallona.

No puede haber duda en la contestacion a tales preguntas. Bajo nuestro sistema de gobierno el poder judicial es el llamado a señalar, a interpretar la ley; y en los conflictos o transgresiones constitucionales esta Corte Suprema tiene la ultima palabra, le compete el arbitraje supremo y final. Bajo nuestra mecanica constitucional, igual que bajo la americana, se da la aparente paradoja de que la superior facultad, el supremo negocio de interpretar la voluntad del pueblo tal como esta expresada mas o menos permanentemente en la Constitucion, no corresponde propiamente a ninguno de los poderes electivos, los que se renuevan periodicamente, sino al poder que si bien es de nombramiento en su origen, tiene, sin embargo, sentido de perpetuidad, quiero decir, es vitalicio en la complexion y funcion de los individuos que lo componen—el poder judicial. La sabiduria peculiar, la originalidad del sistema consiste precisamente en eso: en haber alojado el supremo arbitraje con relacion a los conflictos y transgresiones constitucionales en un poder del Estado al cual deliberadamente se le ha dotado de un clima psicologico y moral el mas propicio posible a la objetividad y desasimiento de las disputas politicas y discordias civiles, situandosele por encima de los vaivenes de la politica al uso y las veleidades de la suerte electoral. "Esto es lo que va implicito en la expresion supremacia judicial, que propiamente es la facultad de revision judicial bajo la Constitucion" (Angara contra Comision Electoral, 63 Jur. Fil., 171).

"The very essence of the American conception of the separation of powers is its insistence upon the inherent distinction between law-making and law-interpreting, and its assignment of the latter to the judiciary, a notion which, when brought to bear upon the Constitution, yields judicial review." (Corwin, *The Twilight of the Supreme Court*, p. 146.)

En el famoso asunto de *Marbury vs. Madison*, supra, el Tribunal Supremo de los Estados Unidos, por boca de su gran Chief Justice John Marshall, en terminos inequívocos definio y explico las facultades de la judicatura para poner en vigor la Constitucion como la suprema ley del pais, y declaro que es terminantemente de la competencia y deber del departamento judicial el decidir cual es la ley que rige.

"The reasoning of Webster and Kent is substantially the same. Webster says: 'The Constitution being the supreme law, it follows of course, that every act of the Legislature contrary to the law must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the Constitution ceases to be legal and becomes only a moral restraint for the legislature. If they, and they only, are to judge whether their acts be

conformable to the Constitution, then the Constitution is advisory and accessory only, not legally binding; because, if the construction of it rest wholly with them, their discretion, in particular cases, may be in favor of very erroneous constructions. Hence the courts of law, necessarily, when the case arises, must decide upon the validity of particular acts.' Webster, Works, Vol. III, 30." (Willoughby on the Constitution of the United States, Vol. 1, 2d edition, pp. 4, 5.)

En el citado asunto de Angara contra Comision Electoral dijimos tambien lo siguiente:

"* * * Y la judicatura, a su vez, con el Tribunal Supremo por arbitro final, frena con efectividad a los demas departamentos en el ejercicio de su facultad de determinar la ley, y de aqui que pueda declarar nulos los actos ejecutivos y legislativos que contravengan la Constitucion."

Esta doctrina se reafirmo en el asunto de Planas contra Gil (67 Phil., 62), a saber:

"* * * As far as the judiciary is concerned, which it holds 'neither the sword nor the purse' it is by constitutional placement the organ called upon to allocate constitutional boundaries, and to the Supreme Court is entrusted expressly or by necessary implication the obligation of determining in appropriate cases the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation. (Section 2 [1], Art. VIII, Constitution of the Philippines.) In this sense and to this extent, the judiciary restrains the other departments of the government and this result is one of the necessary corollaries of the 'system of checks and balances' of the government established."

No es que con esto el poder judicial asume un complejo de superioridad sobre los otros poderes del Estado, no. Se trata simplemente de que, dentro de las limitaciones de toda creation humana, alguien tiene que arbitrar y dirimir los conflictos y las transgresiones a que puede dar lugar la Constitucion, y se estima que el poder judicial, por la razon de su ser y de sus funciones, es el mas llamado a ser ese arbitro. Se trata de una propia y graciosa inhibicion de los otros poderes en virtud de una necesidad impuesta por unas teorias y practicas de gobierno que han resistido la prueba del tiempo y el choque con la realidad y la experiencia. En mi disidencia en el asunto de Vera contra Avelino (77 Phil., 192), hablando sobre este particular dije lo siguiente y lo reitero ahora, a saber:

"En parte, el argumento expuesto es correcto y acertado. No se puede discutir que los tres poderes del Estado son iguales e independientes entre si; que ninguno de ellos es superior al otro, mucho menos el poder judicial que entre los tres es el menos fuerte y el mas precario en medios e instrumentos materiales. Tampoco se puede discutir que bajo la Constitucion cada poder tiene una zona, una esfera de accion propia y privativa, y dentro de esa esfera un cumulo de facultades que le pertenecen exclusivamente; que dentro de esa esfera y en el uso de esas facultades cada poder tiene absoluta discrecion y ningun otro poder puede controlar o revisar sus actos so pretexto de que alguien los cuestiona o tacha de arbitrarios, injustos, imprudentes o insensatos. Pero la insularidad, la separacion llega solo hasta aqui. Desde Montesquieu que lo proclamo cientificamente hasta nuestros dias, el principio de la separacion de poderes ha sufrido tremendas modificaciones y limitaciones. El consenso doctrinal hoy es que la teoria es solo relativa y que la separacion de poderes queda condicionada por una mecanica constitucional—la mecanica de los frenos y cortapisas. (Willoughby, On the Constitution of the United States, tomo 3, pags. 1619, 1620, 2.[a] edicion.) Como queda dicho, cada poder es absoluto dentro de la esfera que le asigna la Constitucion; alli el juego de sus facultades y funciones no se puede coartar. Pero cuando se sale y extravasa de esa esfera invadiendo otras esferas constitucionales, ejerciendo facultades que no le pertenecen, la teoria de la separacion ya no le atpara, la Constitucion que es superior a el le sale al encuentro, le restringe y le achica dentro de sus fronteras, impidiendo sus incursiones anti-constitucionales. La cuestion ahora a determinar es si bajo nuestro sistema de gobierno hay un mecanismo que permite restablecer el juego normal de la Constitucion cuando surgen estos desbarajustes, estos conflictos que podriamos llamar de fronteras constitucionales; tambien es cuestion a determinar si cuando surgen esos conflictos, un ciudadano sale perjudicado en sus derechos, el mismo tiene algun remedio expedito y adecuado bajo la Constitucion y las leyes, y quien puede concederle ese remedio. Y con esto llegamos a la cuestion basica, cardinal en este asunto.

"Nuestra opinion es que ese mecanismo y ese remedio existen—son los tribunales de justicia."

La mayoría no define en su decisión lo que llama cuestión política no-justiciable ni las materias o casos que caen dentro de su significado. "The difficulty lies"—dice la ponencia—"in determining what matters fall within the meaning of political question. The term is not susceptible of exact definition, and precedents and authorities are not always in full harmony as to the scope of the restrictions, on this ground, on the courts to meddle with the actions of the political departments of the government." Pero razonando por analogía cita un precedente, una autoridad—el caso de *Coleman vs. Miller* decidido no hace muchos años por la Corte Suprema Federal de los Estados Unidos. La mayoría cree que este es el caso más semejante al que nos ocupa. Creo que la mayoría padece error: el caso de *Coleman* contra *Miller* es precisamente un buen argumento en favor del recurso.

Compendiado el caso es como sigue: En Junio, 1924, el Congreso de los Estados Unidos propuso una reforma a la Constitución, conocida por "Child Labor Amendment" (enmienda sobre el trabajo infantil). En Enero, 1925, la Legislatura del Estado de Kansas adoptó una resolución rechazando la enmienda y una copia certificada de la resolución se envió al Secretario de Estado de los Estados Unidos. En Enero, 1937, o sea 12 años después, una resolución conocida como "Resolución Concurrente del Senado No. 3" se presentó en el Senado del Estado de Kansas para ratificar la propuesta enmienda. Había 40 Senadores. Al considerarse la resolución 20 Senadores votaron en favor y 20 Senadores en contra. El Teniente Gobernador, que era entonces el Presidente del Senado en virtud de la Constitución estatal, emitió su voto en favor de la resolución, rompiendo así el empate. La resolución fue posteriormente adoptada por la Cámara de Representantes de Kansas mediante una mayoría de los votos de sus miembros.

Fue entonces cuando se interpuso ante la Corte Suprema de Kansas un recurso de *mandamus* por los 20 Senadores adversos a la resolución y por otros 3 miembros de la Cámara de Representantes. El objeto del recurso era (a) compeler al Secretario del Senado a borrar el endoso favorable de la resolución y poner en su lugar las palabras "no ha sido aprobada"; (b) recabar la expedición de un interdicto contra los oficiales del Senado y Cámara de Representantes prohibiéndoles que firmaran la resolución y contra el Secretario de Estado de Kansas prohibiéndole que autentificara dicha resolución y la entregara al Gobernador. La solicitud cuestionaba el derecho del Teniente Gobernador a emitir su voto decisivo en el Senado. También se planteaba en la solicitud el hecho de que la resolución había sido rechazada originariamente y se alegaba, además, que durante el periodo de tiempo comprendido entre Junio, 1924, y Mayo, 1927, la enmienda había sido rechazada por ambas Cámaras de las Legislaturas de 26 Estados y solo se había ratificado en 5 Estados, y que por razón de dicho rechazamiento y por no haberse ratificado dentro de un tiempo razonable la enmienda había perdido su validez y vitalidad.

La Corte Suprema de Kansas halló que no había ninguna disputa sobre los hechos, asumió competencia sobre el caso y sostuvo que el Teniente Gobernador tenía derecho a emitir su voto decisivo, que la proyectada enmienda conservaba su vitalidad original a pesar del tiempo transcurrido, y que la resolución, "habiendo sido aprobada por la Cámara de Representantes y por el Senado, el acto de ratificación de la propuesta enmienda por la Legislatura de Kansas era final y completo." Consiguientemente el recurso de *mandamus* fue denegado.

Elevado el asunto en casación para ante la Corte Suprema Federal, esta asumió jurisdicción sobre el caso, con la concurrencia y disidencia de algunos Magistrados que opinaban que el recurso debía rechazarse de plano, sin más ceremonias, por la razón, según los disidentes, de que los recurrentes no tenían personalidad ni derecho de acción para pedir la revisión de la sentencia de la Corte Suprema de Kansas, y porque además se trataba de una cuestión puramente política, por tanto no-justiciable. Bajo la ponencia de su Presidente el Sr. Hughes, la Corte Suprema Federal conoció del caso a fondo, discutiendo y resolviendo las cuestiones planteadas. He aquí sus palabras: "Our authority to issue the writ of certiorari is challenged upon" the ground that the petitioners have no standing to seek to have the judgment of the state court reviewed and hence it is urged that the writ of certiorari should be

dismissed. We are unable to accept that view." Esto viene a ser como una replica a las siguientes palabras de los disidentes: "It is the view of Mr. Justice Roberts, Mr. Justice Black, Mr. Justice Douglas and myself (Mr. Justice Frankfurter) that the petitioners have no standing in this Court." De lo dicho resulta evidente que la Corte Federal no adopto la actitud de "manos fuera" (hands off), sino que actuo positivamente sobre el caso, encarandolo.

La decision consta de tres partes. La primera parte, que es bastante extensa, esta consagrada enteramente a discutir la cuestion de la jurisdiccion de la Corte. Ya hemos visto que esta cuestion se ha resuelto enteramente en favor de la jurisdiccion, en virtud de las razones luminosas que alli se explanan y que no reproduzco por no ser necesario y para no alargai indebidamente esta disidencia. La segunda parte es bien breve, apenas consta de dos parrafos. Se refiere a la cuestion de si el voto del Teniente Gobernador, que rompio el empate, era o no valido. La Corte no lo resuelve, porque dice que sus miembros se dividieron por igual sobre si era una cuestion politica y, por tanto, no-justiciable. La tercera parte, tan extensa como la primera, esta dedicada a estudiar y discutir las siguientes proposiciones: (a) Si habiendo sido rechazada originariamente la enmienda, una ratificacion posterior podia validamente dejar sin efecto dicho rechazamiento y tomarse como una ratificacion legal al tenor de la Constitucion; (b) si el largo tiempo transcurrido entre el rechazamiento y la ratificacion—unos 13 años—no habia tenido el efecto de dar caracter final a la repudiacion de la enmienda, causando estado juridico definitivo.

El analisis que hace el ilustrado ponente de las cuestiones planteadas es muy interesante y desde luego acabado. Se estudian y comentan luminosamente los precedentes. Sobre la cuestion de si el rechazamiento de una enmienda propuesta impide que la misma sea ratificada posteriormente, se puntualiza lo siguiente: que el articulo V de la Constitucion Federal sobre enmienda esta fraseado en terminos positivos, es decir, habla de ratificacion y no de rechazamiento, y que por tanto "el poder para ratificar lo confiere al Estado la Constitucion, y que, como poder ratificante, continua y persiste, a pesar de un previo rechazamiento." Luego la Corte dice, examinando Jos precedentes, que el Congreso, en el ejercicio de su control sobre la promulgation de las enmiendas a la Constitucion, ha resuelto esta cuestion repetidas veces en el sentido indicado, esto es, considerando inefectivo el previo rechazamiento frente a una positiva ratificacion; y la Corte concluye que esta accion del Congreso es valida, constitucional; por consiguiente, los tribunales no estan autorizados para revisarla. Es en este sentido, creo yo, como la Corte dice que se trata de una cuestion politica no-justiciable, es decir una cuestion que cae dentro de la zona constitucional exclusiva del Congreso; por tanto, se trata de una accion valida, constitucional. Pero no hay nada en esa decision que diga, o permita inferir, que cuando el Congreso viola un mandato expreso de la Constitucion, como en el caso que nos ocupa, los tribunales no pueden intervenir, bajo el principio de la supremacia judicial en tratandose de interpretar la Constitucion, para resolver el conflicto o enjuiciar la transgresion, y conceder el remedio propiamente pedido. En otras palabras, en el caso de Coleman contra Miller la Corte Suprema Federal hallo que el Congreso, al declarar valida la ratificacion de la enmienda constitucional sobre trabajo infantil (Child labor), no habia infringido el articulo V de la Constitucion, sobre enmiendas, y la Corte lo razona diciendo, con la vista de los precedentes, que el referido articulo V habla de ratificacion y no de rechazamiento, y que, por tanto, "el poder para ratificar continua y persiste a pesar de un previo rechazamiento." De suerte que, en realidad de verdad, no es eierto que la Corte Suprema Federal declaro injusticiable la materia, pues ique mejor prueba de justiciabilidad que ese dictum categorico, positivo y terminante?

Sobre la proposicion de si el largo tiempo transcurrido entre el rechazamiento y la ratificacion—unos 13 años—no habia tenido el efecto de dar caracter final a la repudiacion de la enmienda, causando estado juridico definitivo, la Corte Suprema Federal fallo que no, es decir, declaro valida la ratificacion no obstante dicho lapso de tiempo, aduciendo razones muy atinadas, entre ellas lu de que las condiciones de caracter moral, medico, social y economico que aconsejaban la prohibicion del trabajo infantil en las fabricas eran tan validas y existentes, si no mas, cuando se sometio la enmienda por primera vez para su ratificacion como 13 años despues. Y luego la Corte cita autoridades y precedentes en apoyo de su conclusion, entre ellos el caso tipico y decisivo de Dillon vs. Glass

(256 U. S., 368; 65 Law. ed., 994; 41 Sup. Ct., 510). En este caso la Corte declaro que el Congreso, al proponer una enmienda a la Constitucion, puede fijar un tiempo razonable para su ratificacion, y sostuvo la accion del Congreso al disponer en la proyectada 18.[a] Enmienda que la misma seria ineficaz a menos que se ratificase dentro de siete años.

Ahora bien, en el caso de Coleman contra Miller ocurre todo lo contrario: el Congreso no habia fijado ningun plazo para la ratificacion. En vista de esto, los recurrentes pretendian que la Corte supliera la omision del Congreso declarando lo que era tiempo razonable, teniendo en cuenta los precedentes judiciales y el precedente congresional de 7 años ya sostenido en el caso citado de Dillon contra Glass; y que desde luego el periodo de 13 años era demasiado largo para ser razonable. La Corte Suprema dijo que no, que no eran los tribunales los que debian fijar ese tiempo razonable; que en esta cuestion entraban muchos factores de naturaleza varia y compleja—políticos, economicos y sociales—que solo el Congreso estaba en condiciones de determinar ya mediante la correspondiente legislacion como en el caso de la 18.[a] Enmienda, ya en cada caso concreto de ratificacion al ejercer su control sobre la promulgacion de las enmiendas. Ahora bien, pregunto: ¿no es esto un dictum judicial? ¿no es esto justiciar? ¿no esta aqui la Corte Suprema Federal sentandose en estrados y emitiendo judicialmente su opinion sobre una materia juridica y constitutional sometida a su consideracion? En realidad, puede decirse que la unica cuestion que la Corte ha dejado de resolver es la validez o nulidad del voto decisivo del Teniente Gobernador, por la razon de que sobre este punto, segun se dice en la misma decision, la opinion del Tribunal estaba igualmente dividida. Todas las demas cuestiones han sido enjuiciadas, resueltas, y esta accion de la mayoria, asumiendo plena jurisdiccion sobre el caso y las materias en el discutidas, es lo que ha motivado la disidencia de 4 Magistrados los Sres. Black, Roberts, Frankfurter y Douglas. En efecto, estos disidentes no disimulan su desagrado al ver que la Corte asume en el caso, siquier implicitamente, el poder de interpretacion judicial, y aun van mas alla—expresan un notorio desencanto al ver que la Corte "trata el proceso enmendatorio provisto por la Constitucion, como sujeto a interpretacion judicial en algunos respectos, y en otros sujeto a la autoridad final del Congreso", y al ver tambien que en la decision "no hay desaprobacion de la conclusion establecida en el asunto de Dillon contra Glass, de que la Constitucion requiere tacitamente que una enmienda propiamente sometida debe darse por muerta, a menos que se ratifique dentro de un tiempo razonable." Es decir, los Magistrados disidentes esperaban que la Corte revocase y abrogase lo hecho por ella en el citado asunto de Dillon contra Glass en donde la Corte, en vez de abstenerse de conocer del caso por tratarse en el, segun los disidentes, de materia politica no-justiciable, ejercio plena jurisdiccion sobre el mismo asumiendo su poder tradicional de interpretar la Constitucion y declarando valida la ley del Congreso que fijaba un plazo de 7 años para la ratificacion de la 18.[a] Enmienda. No puedo resistir a la tentacion de reproducir las mismas palabras de la disidencia: ellas, mejor que todo lo que yo pueda decir, demuestran de modo inconcuso las irreconciliables diferencias de criterio entre la mayoria, representada por el ilustre ponente Sr. Hughes, y los disidentes, pues mientras por un lado el ponente justicia decididamente el caso considerando, discutiendo y resolviendo todas las cuestiones planteadas, menos la cuestion del voto del Teniente Gobernador, citando profusamente autoridades y precedentes, los disidentes, en su opinion, preconizan una actitud de absoluta abstencion, de "manos fuera" (hands off), por tratarse, segun ellos, de una materia politica no-justiciable que cae exclusivamente bajo el control del Congreso. He aqui las palabras de los disidentes:

"* * * To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

"The State court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of a 'reasonable time' within which Congress may accept ratification; as to whether

duly authorized State officials have proceeded properly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were intrusted by the Constitution solely to the political branch of government.

"The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in *Dillon vs. Glass*, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time'. Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in article 5 of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the political questions of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed. No such division between the political and judicial branches of the government is made by article 5 which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution and is not subject to judicial guidance, control or interference at any point.

"Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress, and in so far as *Dillon vs. Glass* attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. * * *" (*Coleman vs. Miller*, 122 A. L. R., 695, 708, 709.)

La distribucion de los votos con relacion a las cuestiones planteadas en el referido asunto de *Coleman vs. Miller* es algun tanto confusa, como han podido notar los mismos comentaristas; asi que necesita de alguna explicacion. Es cierto que no suscriben la ponencia mas que 3 Magistrados, a saber: el ponente Sr. Hughes y los Sres. Stone y Reed, pero en cuanto a la jurisdiccion plena que la Corte asumio sobre el caso y la materia hay que añadir los votos de los Sres. McReynolds y Butler. Estos dos ultimos no solo concurrían implícitamente en la accion de la Corte al enjuiciar el caso, sino que inclusive opinaban que debía concederse el recurso, esto es, que debía anularse la ratificacion cardia de la Enmienda sobre Trabajo Infantil (Child Labor) hecha por la Legislatura de Kansas. De modo que en cuanto al "issue" de la jurisdiccion, la justiciabilidad del caso, la votacion era de 5 contra 4—por la jurisdiccion, la justiciabilidad, el ponente Sr. Hughes, y los Magistrados Sres. Stone, Reed, McReynolds y Butler; por la actitud de absoluta abstencion, de "manos fuera" (hands off), los Magistrados Sres. Black, Frankfurter, Roberts y Douglas.

Repito lo dicho mas arriba: el caso de *Coleman vs. Miller*, en vez de ser una autoridad a favor de los recurridos, juntamente con el caso de *Dillon vs. Glass* constituyen precedentes decisivos en la jurisprudencia federal americana a favor de los recurrentes.

V

Pero si la jurisprudencia federal milita en favor de la tesis de que tenemos jurisdiccion para enjuiciar y decidir el presente caso, en el ejercicio de nuestras supremas funciones como interprete de la Constitucion bajo el principio firmemente establecido de la supremacia judicial en asuntos propiamente planteados sobre conflictos y transgresiones constitucionales, la jurisprudencia de los Estados es todavia mas indubitable e inequivoca, mas terminante y decisiva. La importancia de esto sube de punto si se tiene en cuenta que, mas que con el gobierno federal, nuestra analogia, nuestros puntos de contacto en lo politico, constitucional y juridico es mas bien con los

diferentes Estados de la Union americana. Nuestro sistema de gobierno es unitario. Aqui nuestras provincias no son Estados autonomos y semi-independientes como lo son los Estados americanos. Asi que la cedula, la unidad politica mas semejante a la nuestra no es la federal, sino la estatal. Por eso si bien es cierto que las constituciones de los Estados, como la nuestra, todas estan fundamentalmente calcadas en el patron de la Constitucion federal, se vera que en ciertos rasgos caracteristicos del sistema unitario nuestra Constitucion se aproxima evidentemente mas a las de los Estados que a la federal. Esa semejanza es sobre todo notabilisima en la parte que se refiere al proceso enmendatorio de la Constitucion. Es que, en realidad, los Estados de la Union americana, para todos los efectos de la vida interior, domestica, son practicamente naciones independientes; asi que nuestra evolucion, nuestro transito de la condicion de Commonwealth a la de Republica soberana e independiente si bien nos distingue de ellos en el derecho internacional, ninguna diferencia, sin embargo, ha operado en el campo constitucional, ora en la parte dogmatica de la Constitucion, ora en la parte organica. Y la mejor prueba de esto es que con la independencia no hemos tenido necesidad de cambiar de Constitucion: la misma que nos servia cuando eramos simple Commonwealth, es decir, cuando estabamos sujetos a la soberania americana, es la misma que nos sirve hoy cuando ya somos Republica; y no cabe duda de que nos serviria perfectamente bien si no la tuvieramos asendereada y malparada en nuestras pecadoras manos con repetidas violaciones, con frecuentes asaltos contra su integridad * * *.

Ahora bien; sin petulancia se puede retar a cualquiera a que señale un caso, un solo caso en la jurisprudencia de los Estados de la Union americana en que los tribunales de justicia se hayan negado a conocer y enjuiciar una violacion constitucional semejante a la que nos ocupa por la razon de que se trataba de una cuestion politica no-justiciable. No hay absolutamente ninguno; por eso que los recurridos, a pesar de las pacientes y laboriosas investigaciones que denota su habil y concienzudo alegato, no han podido citar ni un solo caso.

En cambio, los tomos de jurisprudencia de varios Estados dan cuenta de casos identicos al que nos ocupa y en todos el los se ha declarado invariablemente que la violacion de la Constitucion en lo que se refiere al precepto que regula el proceso de las enmiendas a la Ley organica es una cuestion judicial, y ninguna Corte Suprema de Estado se ha lavado jamas las manos bajo la teoria de la separacion de poderes. Es mas: creo que ni siquiera se ha planteado seriamente la objecion fundada en el argumento de la injusticiabilidad.

Para no alargar demasiado esta disidencia no voy a citar mas que algunos casos los mas conocidos y representativos, tomados de la jurisprudencia de algunos Estados, a saber: Florida, Minnesota, Georgia e Indiana. De la Corte Suprema de Florida tenemos dos casos: el de Crawford vs. Gilchrist y el de Gray vs. Childs.

En el asunto de Crawford vs. Gilchrist (64 Fla., 41; 59 So., 963; Ann. Cas., 1914B, 916), se trataba de una accion de prohibicion interpuesta por el Gobernador del Estado, Albert W. Gilchrist, contra el Secretario de Estado, H. Clay Crawford, para impedir que cierta propuesta enmienda a la Constitucion se publicara y se sometiera al electorado en un plebiscito para su ratificacion o rechazamiento. Es decir, lo mismo de que se trata en el caso que tenemos ante nosotros. La enmienda habia sido aprobada por la Camara de Representantes de Florida con el voto necesario y constitucional de tres quintas (3/5), y fue enviada al Senado para su concurrencia. El Senado tambien la aprobo con el voto de tres quintos, pero esta votacion fue reconsiderada posteriormente. Asi estaba el asunto, pendiente de reconsideracion cuando se clausuro la Legislatura. Despues, sin embargo, diose por aprobada la propuesta enmienda y el Secretario de Estado trato de dar los pasos para su publicacion y ratificacion plebiscitaria. De ahi la accion de interdicto prohibitorio, fundada en la alegacion de que la enmienda no habia sido aprobada debidamente por la Legislatura de acuerdo con los metodos prescritos en la Constitucion de Florida. Igual que en el presente caso tambien hubo alli una batalla forense colosal, con un tremendo despliegue de habilidad y talento por cada lado. El ponente no se recata en alabar el esfuerzo de las partes y dice: " * * * we think the parties to this litigation are to be commended, both for taking the proceedings that have brought these

unusual questions before the court for determination and for the great ability with which their counsel have presented them to this court."

¿Se lavo las manos la Corte Suprema de Florida declarandose incompetente para conocer del asunto por la razon de que se trataba de una cuestion politica y, por tanto, no justiciable? De ninguna manera. La Corte asumio resueltamente su responsabilidad y poder tradicional de interpretar la Constitucion y fallo el asunto en su fondo, declarando que la cuestion era propiamente judicial y que la enmienda constitucional propuesta no se habia aprobada de conformidad con los requisitos establecidos por la Constitucion para el proceso y tramitacion de las enmiendas. Por tanto, se denego la peticion de supersedeas interpuesta por el recurrido para enervar el recurso; es decir, el recurrente gano su inusitado e historico pleito. Y las esferas politicas de Florida no se desorbitaron por esta decisiva derrota de la teoria de la separacion de poderes. Vale la pena reproducir algunas de las doctrinas sentadas en el asunto, a saber:

"Constitutional Law—Power of Courts to Determine Validity of Action by Legislature in Proposing Constitutional Amendment.

"A determination of whether an amendment to the constitution has been validly proposed and agreed to by the Legislature is to be had in a judicial forum where the constitution provides no other means for such determination.

"Injunction—Subject of Relief—Act of Secretary of State in Certifying Proposed Amendments.

"The act of the secretary of state in publishing and certifying to the county commissioners proposed amendments to the constitution is in its nature ministerial, involving the exercise of no discretion, and if the act is illegal it may be enjoined in appropriate proceedings by proper parties, there being no other adequate remedy afforded by law.

"Injunction—Governor as Complainant, Secretary of State as Defendant.

"The governor of the state, suing as such, and also as a citizen, taxpayer, and elector, is a proper complainant in proceedings brought to enjoin the secretary of state from publishing at public expense and certifying proposed amendments to the constitution upon the ground that such proposed amendments are invalid because they have not been duly 'agreed to by three-fifths of all the members elected to each house' of the legislature.

"Amendment to Constitution—Effect of Ignoring Mandatory Provisions of Constitution.

"If essential mandatory provisions of the organic law are ignored in amending the constitution, it violates the right of all the people of the state to government regulated by law.

"Duty of Court to Enforce Constitution.

"It is the duty of the courts in authorized proceedings to give effect to the existing constitution.

"Mandatory Provisions of Constitution as to Manner of Amending Constitution.

"The provision of the organic law requiring proposed amendments of the constitution to 'be agreed to by three-fifths of all the members elected to each house' of the legislature is mandatory, and it clearly contemplates that such amendments shall be agreed to by the deliberate, final, affirmative vote of the requisite number of the members of each house at a regular" session.

"Construction of Constitution to Give Intended Effect—Mandatory Character of Provisions.

"Every word of a state constitution should be given its intended meaning and effect, and essential provisions of a constitution are to be regarded as being mandatory." (Crawford vs. Gilchrist, Ann. Cas., 1914B, pp. 916, 917.)

El asunto de Crawford vs. Gilchrist se decidió en 1912. En 1934 otro asunto constitucional importante, el de Gray contra Childs, se decidió en virtud de la autoridad y sentencia dictada en dicho asunto de Crawford.

En el caso citado de Gray contra Childs (156 So. Rep., 274; Fla.), también se trataba de una demanda de prohibición para impedir la publicación de una propuesta enmienda constitucional que iba a ser sometida al electorado de Florida para su ratificación o rechazamiento en una elección general o plebiscito fijado para Noviembre, 1934. La enmienda había sido aprobada por la Cámara de Representantes con el voto de tres quintos (3/5), pero en el Senado hubo cierta confusión acerca del texto finalmente aprobado. La Legislatura, antes de clausurarse aprobó una resolución conjunta autorizando a ciertos oficiales de las Cámaras para que después de la clausura hicieran ciertas correcciones en las actas y en el diario de sesiones a fin de formar la verdadera historia de los procedimientos y compulsar el texto de la enmienda tal como había sido aprobada. Se alegaba en la demanda que esto era ilegal y anticonstitucional. El tribunal de circuito estimó el recurso de prohibición. Elevado el asunto en apelación para ante la Corte Suprema del Estado, la misma confirmó la sentencia apelada concediendo el interdicto prohibitorio. He aquí los pronunciamientos de la Corte que parecen estereotipados para el caso que nos ocupa, a saber:

"(4, 5) Section 1 of article 17 of our Constitution provides the method by which the Constitution may be amended. It requires that a proposed amendment shall be entered upon the respective Journals of the House of Representatives and of the Senate with the yeas and nays showing a three-fifths vote in favor of such amendment by each House. The proposed amendment here under consideration nowhere appears upon the Journals of the Senate, and therefore it is unnecessary for us to consider any other questions presented or any authorities cited.

"The amendment of the organic law of the state or nation is not a thing to be lightly undertaken nor to be accomplished in a haphazard manner. It is a serious thing. When an amendment is adopted, it becomes a part of the fundamental law of the land, and it may mean the weal or woe of the future generations of the state wherein it becomes a part of the fundamental law. We cannot say that the strict requirements pertaining to amendments may be waived in favor of a good amendment and invoked as against a bad amendment. If the Constitution may be amended in one respect without the amendment being spread upon the Journals of one of the respective Houses of the Legislature, then it may be amended in any other respect in the same manner. It is not for the courts to determine what is a wise proposed amendment or what is an unwise one. With the wisdom of the policy the courts have nothing to do. But it is the duty of the courts, when called upon so to do, to determine whether or not the procedure attempted to be adopted is that which is required by the terms of the organic law.

"Finding that the organic law has not been complied with, as above pointed out, the decree appealed from should be, and the same is hereby, affirmed on authority of the opinion and judgment in the case of Crawford vs. Gilchrist, 64 Fla., 41; 59 So., 953; Ann. Cas., 1914B, 916." (Gray vs. Childs, 156 Southern Reporter, pp. 274, 279.)

Notese que la cláusula sobre enmienda en la Constitución de Florida es semejante a la nuestra, a saber: (1) la propuesta enmienda tiene que ser aprobada por la Legislatura, en Florida con el voto de tres quintos (3/5) de los miembros, en Filipinas con el voto de tres cuartos (3/4); (2) los síes y los nos tienen que hacerse constar en el diario de sesiones (Artículo VI, sección 10, inciso 4; sección 20, inciso 1, Constitución de Filipinas); (3) después de aprobada la enmienda por la Legislatura se somete al electorado en una elección o plebiscito, para su ratificación o rechazamiento.

El procedimiento sobre enmiendas prescrito en la Constitución federal americana es diferente, a saber: el Congreso puede proponer la enmienda bien (1) mediante la aprobación de dos tercios (2/3) de sus miembros; bien (2) mediante una convención que se convocara al efecto a petición de las Legislaturas de dos tercios (2/3) de los

diferentes Estados. En cualquiera de ambos casos la enmienda sera valida para todos los efectos y fines como parte de la Constitucion siempre que fuera ratificada por las Legislaturas de tres cuartos ($\frac{3}{4}$) de los Estados, o por convenciones de tres cuartas-partes de los mismos, segun que uno u otro modo de ratificacion hubiera sido propuesto por el Congreso.

Esta diferencia de procedimientos es la que, segun digo mas arriba, me inclina a sostener que la jurisprudencia constitucional propiamente aplicable a Filipinas es la jurisprudencia de los Estados, puesto que es con estos con los cuales tenemos analogia o paridad constitucional en lo quo toca a la forma y manera como se puede reformar la Constitucion.

Seguire ahora citando mas casos.

Tenemos un caso de Minnesota, identico a los ya citados de Florida. En el asunto de *In re McConaughy* (106 Minn., 392; 119 N. W., 408), tambien se suscito la cuestion de si una propuesta enmienda constitucional habia sido aprobada de acuerdo con los requisitos señalados en la Constitucion de Minnesota. Alli como aqui tambien hubo disputa sobre si esto era una cuestion judicial o una cuestion politica no justiciable. La Corte Suprema de aquel Estado declaro sin ambages que era una cuestion judicial. He aqui sus palabras que no tienen desperdicio:

"The authorities are thus practically uniform in holding that whether a constitutional amendment has been properly adopted according to the requirements of an existing constitution is a judicial question. There can be little doubt that the consensus of judicial opinion is to the effect that it is the absolute duty of the judiciary to determine whether the constitution has been amended in the manner required by the constitution, unless a special tribunal has been created to determine the question; and even then many of the courts hold that the tribunal cannot be permitted to illegally amend the organic law. There is some authority for the view that when the constitution itself creates a special tribunal, and confides to it the exclusive power to canvass votes and declare the results, and makes the amendment a part of the constitution as a result of such declaration by proclamation or otherwise, the action of such tribunal is final and conclusive. It may be conceded that this is true when it clearly appears that such was the intention of the people when they adopted the constitution. The right to provide a special tribunal is not open to question; but it is very certain that the people of Minnesota have not done so, and this fact alone eliminates such cases as *Worman vs. Hagan*, 78 Md., 152; 27 Atl., 616; 21 L. R. A., 716, and *Miles vs. Badford*, 22 Md., 170; 85 Am. Dec., 643, as authorities against the jurisdiction of the courts." (*In re McConaughy*, 106 Minn., 392; 119 N. W., 408.)

Tambien tenemos un caso de Georgia. En el asunto de *Hammond vs. Clark* (136 Ga., 313; 71 S. E., 479; 38 L. R. A. [N. S.], 77), se suscito igualmente una disputa sobre si una enmienda habia sido aprobada de acuerdo con los requisitos de la Constitucion era una cuestion judicial o no. La Corte Suprema de aquel Estado declaro afirmativamente. He aqui su inequivoca pronunciamiento:

"Counsel for plaintiff in error contended that the proclamation of the governor declaring that the amendment was adopted was conclusive, and that the courts could not inquire into the question. To this contention we cannot assent. The constitution is the supreme state law. It provides how it may be amended. It makes no provision for exclusive determination by the governor as to whether an amendment has been made in the constitutional method, and for the issuance by him of a binding proclamation to that effect. Such a proclamation may be both useful and proper, in order to inform the people whether or not a change has been made in the fundamental law; but the constitution did not make it conclusive on that subject. When the constitution was submitted for ratification as a whole, a provision was made for a proclamation of the result by the governor. Const. art. 13, section 2, par. 2 (Civ. Code 1910, section 6613). But in reference to amendment there is no such provision. Const. article 13, section 1, par. 1 (Civ. Code 1910, section 6610). In the absence of some other exclusive method of determination provided by the constitution, the weight of authority is to the effect that whether an amendment has been properly adopted according to the requirements of the existing constitution is a judicial question." (*Hammond vs. Clark*, 136 Ga., 313; 71 S. E., 479; 38 L. R. A. [N. S.], 77.)

Tambien tenemos el siguiente caso de Indiana:

"(1) In the beginning we are confronted with the contention on the part of appellees that this court has no jurisdiction to determine the questions in issue here. In the case of *Ellingham vs. Dye*, 178 Ind., 336, 391; 99 N. E., 1, 21 (Ann. Cas. 1915C, 200), this court, after reviewing many decisions as to the power of the courts to determine similar questions, sums up the whole matter as follows:

" 'Whether legislative action is void for want of power in that body, or because the constitutional forms or conditions have not been followed or have been violated (italics supplied) may become a judicial question, and upon the courts the ineluctable duty to determine it falls. And so the power resides in the courts, and they have, with practical uniformity, exercised the authority to determine the validity of the proposal, submission, or ratification of change in the organic law. Such is the rule in this state'—citing more than 40 decisions of this and other states.

"(2) Appellees further contend that appellant has not made out a case entitling him to equitable relief. The trial court found that the officers of the state, who were instructed with the execution of the law, were about to expend more than \$500,000 under the law, in carrying out its provisions; indeed, it was suggested, in the course of the oral argument, that the necessary expenditures would amount to more than \$2,000,000. This court, in the case of *Ellingham vs. Dye*, supra, involving the submission to the people of the Constitution prepared by the Legislature, answered this same question contrary to the contention of appellees. See pages 413 and 414 of that opinion." (186 Ind., 533; *Bennett vs. Jackson*, North Eastern Reporter, Vol. 116, pp. 921, 922.)

Creo que la posicion de la jurisprudencia americana tanto federal como de Estado sobre este punto, esto es, cuando es judicial la cuestion y cuando no lo es, se halla bien definida en el tomo 12 del Corpus Juris, en la parte que lleva el encabezamiento de "Constitutional Law" y bajo el subepigrafe que dice: "Adoption of Constitution and Amendments" (12 Corpus Juris, 880, 881). Es un compendio cuidadosamente elaborado en que se da un extracto de la doctrina con las citas sobre autoridades al pie. Reproducir el compendio, pero omitiendo las citas para no alargar demasiado esta disidencia: el que desee comprobarlas no tiene mas que consultar el tomo. En realidad, leyendo este extracto se ve que parece un resumen del extenso analisis que llevo hecho sobre la doctrina tanto federal como estatal. Su meollo es, a saber: la cuestion de si o no una nueva constitucion se ha adoptado la tienen que decidir los departamentos politicos del gobierno; pero la cuestion de si una enmienda a una constitucion existente ha sido debidamente propuesta, adoptada y ratificada de acuerdo con los requisitos provistos por la Constitucion, para que venga a ser parte de la misma, es una cuestion que los tribunales de justicia tienen que determinar y resolver, excepto cuando la materia ha sido referida por la Constitucion a un tribunal especial con poder para llegar a una conclusion final. He aqui el sinopsis:

"SEC. 382. b. Adoption of Constitution and Amendments.—Whether or not a new constitution has been adopted is a question to be decided by the political departments of the government. But whether an amendment to the existing constitution has been duly proposed, adopted, and ratified in the manner required by the constitution, so as to become part thereof, is a question for the courts to determine, except where the matter has been committed by the constitution to a special tribunal with power to make a conclusive determination, as where the governor is vested with the sole right and duty of ascertaining and declaring the result, in which case the courts have no jurisdiction to revise his decision. But it must be made clearly to appear that the constitution has been violated before the court is warranted in interfering. In any event, whether an entire constitution is involved, or merely an amendment, the federal courts will not attempt to pass on the legality of such constitution or amendment where its validity has been recognized by the political departments of the state government, and acquiesced in by the state judiciary." (12 C. J., pp. 880, 881.)

VI

Otra razon que aduce la mayoria para desestimar el recurso es que la copia impresa de la resolucion en cuestion aparece certificada por los presidentes de ambas Camaras del Congreso; que en esa certificacion consta que dicha resolucion fue debidamente aprobada por el Congreso con los votos de las tres quintas-partes (3/5) de sus miembros; que, por tanto, la debida aprobacion de dicha resolucion no se puede cuestionar, es una prueba concluyente para todo el mundo y para los tribunales de justicia particularmente. Este argumento se funda en la doctrina inglesa llamada "enrolled act doctrine," cuya traduccion mas aproximada al español es "doctrina de la ley impresa." Esto, por un lado.

Por otro lado, la representacion de los recurrentes arguye que lo que rige y prevalece en esta jurisdiccion no es la doctrina inglesa o "enrolled act doctrine," sino la doctrina americana que se conoce con el nombre de "journal entry doctrine," en virtud de la cual la prueba de si una ley o una resolucion ha sido debidamente aprobada por el Congreso debe buscarse en el diario de sesiones mismo del Congreso. Lo que diga el diario de sesiones es concluyente y final.

Los recurrentes tienen la razon de su parte. Este punto legal ya se resolvió por esta Corte en la causa de los Estados Unidos contra Pons (34 Jur. Fil., 772), que ambas partes discuten en sus respectivos informes. Una de las defensas del acusado era que la Ley No. 2381 de la Legislatura Filipina en virtud de la cual habia sido condenado era nula e ilegal porque se aprobo despues ya del cierre de las sesiones especiales que tuvo lugar el 28 de Febrero de 1914, a las 12 de la noche; es decir, que, en realidad de verdad, la aprobacion se efectuó el 1.º de Marzo, pues la sesion sine die del dia anterior se prolongo mediante una ficcion haciendose parar las manecillas del reloj a las 12 en punto de la noche. Esta Corte, sin necesidad de ninguna otra prueba, examino el diario de sesiones correspondiente a la referida fecha 28 de Febrero, y habiendo hallado que alli constaba inequívocamente haberse aprobado la mencionada ley en tal fecha, fallo que esta prueba era final y concluyente para las partes, para los tribunales y para todo el mtmdo. La Corte desatendió por completo el "enrolled act," la copia impresa de la ley, pues dijo, a saber: "Pasando por alto la cuestion relativa a si la Ley Impresa (Ley No. 2381), que fue aprobada por autorizacion legal, constituye prueba concluyente sobre la fecha de su aprobacion, investigaremos si los Tribunales pueden consultar otras fuentes de informacion, ademas de los diarios de las sesiones legislativas, para determinar la fecha en que se cerraron las sesiones de la Legislatura, cuando tales diarios son claros y explicitos." Y la Corte dijo que no habia necesidad de consultar otras fuentes, que el diario de sesiones era terminante, definitivo; y así fallo la causa en contra del apelante.

Y no era extraño que así ocurriese: habia en la Corte una mayoria americana, familiarizada y compenetrada naturalmente con la jurisprudencia pertinente de su pais ¿Que de extraño habia, por tanto, que aplicasen la doctrina americana, la doctrina del "journal entry," que es mas democratica, mas republicana, en vez de la doctrina inglesa, el "enrolled act doctrine," que despues de todo tiene cierto tinte monarquico, producto del caracter peculiar e influencia tradicionalista de las instituciones inglesas? (Vease *Rash vs. Allen*, 76 Atl. Rep., 371; Del.) Firman, como se sabe, la decision el ponente Sr. Trent, y los Magistrados Sres. Torres, Johnson, Moreland y Araullo, sin ningun disidente. Y notese que cuando se promulgo esta sentencia todavia estaba en vigor el articulo 313 delCodigo de Procedimiento Civil, tal como estaba reformado por la Ley No. 2210, que entre otras cosas proveia lo siguiente: "* * * Entendiendose, que en el caso de las Leyes de la Comision de Filipinas o de la Legislatura Filipina, cuando existe una copia firmada por los Presidentes y los secretarios de dichos cuerpos, sera prueba concluyente de las disposiciones de la ley en cuestion y de la debida aprobacion de las mismas." ¿Que mejor prueba de la voluntad expresa, categorica, de hacer prevalecer la doctrina americana sobre la doctrina inglesa? Lo mas comodo para esta Corte hubiera sido aplicar el citado articulo 313 delCodigo de Procedimiento Civil. No lo hizo, paso por alto sobre el mismo, yendo directamente al diario de sesiones de la

Legislatura, tomando conocimiento judicial del mismo. Si aqui hay algun respeto a la regla del stare decisis, esta es una magnifica ocasion para demostrarlo. Una regla bien establecida no ha de abrogarse asi como asi; sobre todo cuando de por medio anda la Constitucion como en el presente caso en que se ha formulado ante nosotros la queja de que la ley fundamental ha sido violada en un respecto muy importante como es el capitulo sobre enmiendas, y la queja no solo no es temeraria sino que se halla apoyada en buenas y solidas razones.

Mas todavia: cuando se establecio la doctrina en la citada causa de los Estados Unidos contra Pons (1916, Agosto 12) adoptando en esta jurisdiccion la doctrina americana del "journal entry" en lugar de la inglesa del "enrolled act," en nuestra Ley Organica que, por cierto, no era aun la Ley Jones sino la Ley del Congreso de 1902, no habia ninguna disposicion que proveyera mandatoriamente que en el diario de sesiones de la Legislatura se hiciesen constar los sies y los nos en la votacion de cualquier proyecto de ley o resolucion, consignando especificamente los nombres de los miembros que hayan votado en pro y en contra, ni tampoco habia ninguna disposicion estatutoria a dicho efecto. De modo que en aquella epoca el diario de sesiones de la Legislatura carecia aun de las fuertes garantias de veracidad que ahora posee en virtud de esa disposicion que hace obligatoria la constancia o consignacion de los sies y nos, disposicion incorporada en la Constitucion del Commonwealth, ahora de la Republica. (Vease Constitucion de Filipinas, Artículo VI, seccion 10, inciso 4; seccion 20, inciso 1; seccion 21, inciso 2.)

Sobre la derogacion del articulo 313 delCodigo de Procedimiento Civil no puede haber duda. Ese articulo, que equivale a una regla de prueba, no se ha incorporado en el Reglamento de los Tribunales. No tratandose de una regla fundada en un principio general y unanimemente establecido, sino de algo peculiar aislado, acerca del cual las autoridades estan divididas, con una mayoria de los Estados de la Union americana decididamente en contra, su no inclusion en el Reglamento de los Tribunales tiene que considerate necesariamente como una derogacion. Indudablemente esta Corte, al no incluir dicho articulo en el Reglamento de los Tribunales, ha querido derogarlo en vista de lo resuelto en la citada causa de Estados Unidos contra Pons y de la novisima disposicion insertada en la Constitucion del Commonwealth, ahora de la Republica, que exige la consignacion en el diario de sesiones de los sies y nos en cada votacion final de proyecto de ley o resolucion conjunta, con especificacion de los nombres de los que han votado.

Resulta evidente de lo expuesto que ahora existen mas razones para reanrmar en esta jurisdiccion la doctrina americana del "journal entry" o "constancia en el diario de sesiones" (1) porque el citado seccion 313 delCodigo de Procedimiento Civil ya no rige con la vigencia del Reglamento de los Tribunales; (2) porque esa disposicion de nuestra Constitucion que hace obligatoria la consignacion de los sies y nos en la votacion de cada bill o resolucion, con especificacion de los nombres de los que hayan votado en favor y en contra, hace del diario de sesiones la mejor prueba sobre autenticidad de los actos legislativos y es, por consiguiente, la ley sobre la materia en este pais, con entera exclusion de la doctrina inglesa o "enrolled act doctrine." Las autoridades americanas son contestes en que siempre que en un Estado de la Union Federal la Constitucion contiene una disposicion semejante a la nuestra sobre sies y nos la regla de prueba no es la copia impresa de la ley o "enrolled act," sino el "journal entry" o constancia en el diario de sesiones. (Vease *Rash vs. Allen*, supra.)

Aqui se podria dar por terminada toda discusion sobre este punto si no fuera porque los abogados de los recurridos arguyen fuertemente en favor de la doctrina de la copia impresa o "enrolled act doctrine," y la mayoria de esta Corte acepta sus argumentos. Se cita, sobre todo, el asunto federal de *Field vs. Clark* en apoyo de la doctrina.

He examinado la jurisprudencia americana sobre este particular con toda la diligencia de que he sido capaz y he llegado a la conclusion de que nuestros predecesores en esta Corte merecen todo encomio por su indubitable acierto al adoptar en esta jurisdiccion, en la causa de los Estados Unidos contra Pons, supra, la doctrina americana

del "journal entry" o constancia en el diario de sesiones legislativas. No cabe duda de que esta doctrina es mas democratica, mas liberal, y tambien mas humana y mas Concorde con la realidad. La doctrina inglesa del "enrolled act" o copia impresa de la ley esta basada en el derecho comun y se adopto en Inglaterra donde, como se sabe, no hay constitucion escrita y la forma de gobierno es monarquica, y se adopto en un tiempo en que el poder del Parlamento que era tambien el mas alto tribunal de justieia, era absoluto y transcendente y las restricciones sobre el mismo eran muy ligeras. Por eso un tribunal americano ha dicho: "Because such a rule obtains as to the Parliament of Great Britain, under a monarchical form of government, that cannot be regarded as a very potent reason for its application in this state, where the will of the sovereign power has been declared in the organic act." (Vease *Rash vs. Allen*, supra, pag. 379; cito con frecuencia este asunto famoso de Delaware porque es en el mismo donde he hallado una discusion mas acabada y comprensiva sobre ambas doctrinas: la americana del "journal entry" y la inglesa del "enrolled act.")

Es indudable que el sesgo de la jurisprudencia americana hoy en dia es a favor de la doctrina del "journal entry." Lo resuelto en el asunto federal de *Field contra Clark*, en que tanto enfasis ponen los recurridos, no ha hecho mas que fortalecer ese giro, pues en dicho asunto va envuelta la inferencia de que cuando la Constitucion establece ciertos requisitos para la aprobacion de una ley o resolucion, con la consignacion de los sies y nos y los nombres de los que han votado afirmativa y negativamente, el diario de sesiones es el que rige y prevalece como modo e instrumento de autenticacion. Por eso que en el asunto tipico y representativo de *Union Bank vs. Commissioners of Oxford* (199 N. C., 214; 25 S. E., 966; 34 L. R. A., 487), la Corte Suprema de North Carolina ha declarado lo siguiente:

"According to the law it is well settled in nearly 100 well-adjudicated cases in the courts of last resort in 30 states, and also by the Supreme Court of the United States, that when a state Constitution prescribes such formalities in the enactment of laws as require a record of the yeas and nays on the legislative journals, these journals are conclusive as against not only a printed statute, published by authority of law, but also against a duly enrolled act. The following is a list of the authorities, in number 93, sustaining this view either directly or by very close analogy. * * * It is believed that no federal or state authority can be found in conflict with them.

"Decisions can be found, as, for instance, *Carr vs. Coke* (116 N. C., 223; 22 S. E. 16; 28 L. R. A., 737; 47 Am. St. Rep., 801, supra, to the effect that, where the Constitution contains no provision requiring entries on the journal of particular matters—such, for example, as calls of the yeas and nays on a measure in question—the enrolled act cannot, in such case, be impeached by the journals. That, however, is very different proposition from the one involved here, and the distinction is adverted to in *Field vs. Clark*, 143 U. S., 671 (12 Sup. Ct., 495; 36 Law. ed., 294." (*Rash vs. Allen*, 76 Atl. Rep., p. 377.)

Y en el asunto de *Ottawa vs. Perkins* la Corte Suprema de los Estados Unidos ha dicho lo siguiente:

"But the Supreme Court of the United States, in the case of *South Ottawa vs. Perkins*, 94 U. S., 260; 24 Law., ed., 154, on appeal from the United States court for the Northern district of Illinois (Mr. Justice Bradley delivering the opinion); said: 'When once it became the settled construction of the Constitution of Illinois that no act can be deemed a valid law, unless by the journals of the Legislature it appears to have been regularly passed by both houses, it became the duty of the courts to take judicial notice of the journal entries in that regard. The courts of Illinois may decline to take that, trouble, unless parties bring the matter to their attention, but on general principles the question as to the existence of a law is a judicial one and must be so regarded by the courts of the United States.'" (*Rash vs. Allen*, 76 Atl. Rep., p. 387.)

Se dice que el interes publico exige que el "enrolled act" o copia impresa de la ley firmada por los Presidentes de ambas Camaras del Congreso se declare concluyente y final, porque de otra manera habria caos, confusion: cualquiera se creeria con derecho a atacar la validez de una ley o resolucion, impugnando la autenticidad de su aprobacion o de su texto. Pero esto pone en orden las siguientes preguntas que se contestan por si mismas: ¿no es

el diario de sesiones un documento constitucional, exigido por la Constitucion que se lleve por las dos camaras del Congreso, controlado y supervisado por dichas camaras y por los oficiales de las mismas? ¿que mejor garantia de autenticidad, contra la falsificacion, que ese requerimiento constitucional de consignar obligatoriamente en el diario, en la votacion de todo bill o resolucion, los sies y los nos, y haciendo constar los nombres tanto afirmativos como negativos? ¿se ha producido por ventura caos y confusion en los Estados americanos que han adoptado esta regla y que, sosiin admiten los mismos recurridos, forman una decisiva mayoria? ¿es acaso posible concebir que el sentido americano, tan practico, tan utilitario, tan realista, optase por una regla que fuese origen de caos y confusion? Prescindiendo ya de la jurisprudencia que, ya hemos visto, esta decididamente inclinada a favor de la doctrina americana del "journal entry" ¿que dicen los tratadistas mas autorizados, los de nombradia bien establecida, y sobre todo los especialistas en derecho constitucional?

El Juez Cooley, en su celebrada obra sobre Constitutional Limitations, 7th ed., 193, dice lo siguiente a favor del "journal entry rule":

"Judge Cooley in his work on Constitutional Limitations (7th Ed., 193), says: 'Each house keeps a journal of its proceedings which is a public record, and of which the courts are at liberty to take judicial notice. If it would appear from these journals that any act did not receive the requisite majority, or that in respect to it the Legislature did not follow any requirement of the Constitution or that in any other respect the act was not constitutionally adopted, the courts may act upon this evidence, and adjudge the statute void. Rut whenever it is acting in apparent performance of legal functions, every reasonable presumption is to be made in favor of the action of a legislative body. It will not be presumed in any case, from the mere silence of the journals, that either house has exceeded its authority, or disregarded a constitutional requirement in the passage of legislative acts, unless when the Constitution has expressly required the journals to show the action taken, as, for instance, where it requires the yeas and nays to be entered.'

Sutherland, en su tambien celebrada obra sobre Statutory Construction, seccion 46 y siguientes, tambien se declara a favor del "journal entry rule" con el siguiente pronunciamiento:

"The presumption is that an act properly authenticated was regularly passed, unless there is evidence of which the courts take judicial notice showing the contrary. The journals are records, and, in all respects touching proceedings under the mandatory provisions of the Constitution, will be effected to impeach and avoid the acts recorded as laws and duly authenticated, if the journals affirmatively show that these provisions have been disregarded. * * * The journals by being required by the Constitution or laws, are record * * *.

"When required, as is extensively the case in this country, by a paramount law, for the obvious purpose of showing how the mandatory provisions of that law have been followed in the methods and forms of legislation, they are thus made records in dignity, and are of great importance. The legislative acts regularly authenticated are also records. The acts passed, duly authenticated, and such journals are parallel records; but the latter arc superior, when explicit and conflicting with the other, for the acts authenticated speak decisively only when the journals are silent, and not even then as to particulars required to be entered therein." (Rash vs. Allen, 76 Atl. Rep., p. 378.)

Desde luego la opinion de Wigmore, en que se apoya la mayoria, merece toda clase de respetos. Pero creo no se me tachara de parcial ni ligero si digo que sobre el punto constitucional que estamos discutiendo, me inclino mas y doy mayor peso a la opinion del Juez Cooley y de Sutherland, por razones obvias. Wigmore nunca pretendio ser especialista en derecho constitucional. Con mucho tino el ponente en el tantas veces citado asunto de Rash contra Allen dice lo siguiente de la opinion del celebrado constitucionalista:

"We have quoted Judge Cooley's language because of the great respect that his opinions always command, and also because of the fact that it is upon the authority of his opinion that many of the decisions in support of the American rule have been based." (Rash vs. Allen, 76 Atl. Rep., p. 378.)

Un detenido y minucioso examen de la jurisprudencia y de los tratados sobre el particular lleva a uno al convencimiento de que la tendencia actual en America es a tomar la substancia, el fondo mismo de las cosas en vez de la simple forma, el caparazon, a prescindir del artificio, de la ficcion legal, para ir a la realidad misma. Y no cabe duda de que el "enrolled act" se presta a veces a tener mas apoyo en el artificio y ficcion legal, mientras que el diario de sesiones, con las fuertes garantias de autenticidad como las que se proveen en nuestra Constitucion y en Constituciones similares americanas, reproduce y refleja la realidad de los liechos relativamente con mas exactitud y fidelidad. Tomemos como ejemplo el presente caso. La copia impresa de la resolucion cuestionada, firmada por los Presidentes de ambas Camaras del Congreso, reza que la misma fue aprobada debidamente con los votos de las tres cuartas- partes ($\frac{3}{4}$) del Congreso, pero esto no es mas que una. opinion, una conclusion legal de los presidentes, pues no consta en dicha copia impresa el numero concreto de votos emitidos, ni el numero concreto de la totalidad de miembros actuales de cada camara. Tampoco constan en dicha copia impresa, tal como manda la Constitucion, los sies y nos de la votacion, con los nombres de los que votaron afirmativa y negativamente. Asi que, con solo esa copia impresa a la vista, no podemos resolver la importantisima cuestion constitucional que plantean los recurrentes, a saber: que la votacion fue anticonstitucional; que arbitrariamente fueron excluidos de la votacion 11 miembros debidamente cualificados del Congreso—3 Senadores y 8 Representantes; que, por virtud de la exclusion ilegal y arbitraria de estos 11 miembros, el numero de votos emitidos en cada camara a favor de la resolucion no llega ni constituye las tres cuartas-partes ($\frac{3}{4}$) que requiere la Constitucion; y que, por tanto, la resolucion es ilegal, anticonstitucional y nula. Para resolver estas cuestiones, todas tremendas, todas trascendentales, no hay mas remedio que ir al fondo, a las entrañas de la realidad, y todo ello no se puede hallar en el "enrolled act," en la copia impresa de la ley, que es incolora, muda sobre el particular, sino en el diario de sesiones donde con profusion se dan tales detalles. ¿No es verdad que todo esto demuestra graficamente la evidente, abrumadora superioridad del "journal entry" sobre el "enrolled act," como medio de prueba?

Mi conclusion, pues, sobre este punto es que el giro de la legislacion y jurisprudencia en los diferentes Estados de la Union es decididamente. en favor de la doctrina americana del "journal entry"; que en Filipinas desde 1916 en que se promulgo la sentencia en la causa de Estados Unidos contra Pons la regla es el "journal entry rule"; que esta regla se adopto por este Supremo Tribunal en un tiempo en que estaba vigente el articulo 313 delCodigo de Procedimiento Civil y cuando el diario de sesiones de la Legislatura no gozaba de los prestigios de que goza hoy, en virtud de las rigidas y fuertes garantias sobre autenticidad de las votaciones legislativas provistas en nuestra Constitucion; que ahora que el referido articulo 313 delCodigo de Procedimiento Civil ya ha sido derogado por el Reglamento de los Tribunales y se hallan vigentes esas garantias constitucionales que son mandatorias, la regla indiscutible y exclusiva sobre la materia es el "journal entry rule"; que la regla americana es mas liberal y mas democratica que la regla inglcsa, la cual tiene un evidente sabor monarquico; que el pueblo filipino jamas tolerara un sistema monarquico o algo semejante; que el cambiar de regla ahora es un paso muy desafortunado, un injustificado retroceso, un apoyo a la reaccion y puede dar lugar a la impresion de que las instituciones de la Republica filipina tienden a ser totalitarias; que la doctrina inglesa del "enrolled act" es un instrumento harto inadecuado, ineficaz, para resolver conflictos constitucionales que se iran planteando ante los tribunales, e inclusive puede fomentar groseros asaltos contra la Constitucion; que, por el contrario, la doctrina americana del "journal entry" es amplia, eficaz, y permite que con toda libertad y desembarazo so puedan resolver los conflictos y transgresiones constitucionales, sin evasivas ni debilidades; y, por ultimo, que nuestro deber, el deber de esta Corte, es optar por la doctrina que mejor asegure y fomente los procesos ordenados do la ley y de la Constitucion y evite situaciones en que el ciudadano se sienta como desamparado de la ley y de la Constitucion y busque la justicia por sus propias manos.

VII

La mayoría, habiendo adoptado en este asunto una posición inhibitoria, estima innecesario discutir la cuestión de si los 3 Senadores y 8 Representantes que fueron excluidos de la votación son o no miembros del Congreso. Es decir, lo que debiera ser cuestión fundamental—el leitmotiff, la verdadera ratio decidendi en este caso—se relega a término secundario, se deja sin discutir y sin resolver. No puedo seguir a la mayoría en esta evasión: tengo que (discutir este punto tan plenamente como los otros puntos, si no más, porque es precisamente lo principal—el meollo del caso.

Comencemos por el Senado. Los 3 Senadores excluidos eran miembros actuales del Senado cuando se votó la resolución cuestionada, por las siguientes razones:

(a) Según la estipulación de hechos entre las partes y los ejemplares del diario de sesiones que obran en autos como anexos, dichos Senadores fueron proclamados por la Comisión de Elecciones como electos juntamente con sus 21 compañeros. Después de la proclamación participaron en la organización del Senado, votando en la elección del Presidente de dicho cuerpo. De hecho el Senador Vera recibió 8 votos para Presidente contra el Senador Avelino que recibió 10. También participaron en algunos debates relativos a la organización.

(b) También consta en la estipulación de hechos y en el diario de sesiones que prestaron su juramento de cargo ante Notarios particulares debidamente autorizados y calificados para administrarlo, habiéndose depositado dicho juramento en la secretaría del Senado. Se dice, sin embargo, que ese juramento no era válido porque no se prestó colectivamente, en unión con los otros Senadores. Esto es un error. La Ley sobre la materia es el artículo 26 del Código Administrativo Revisado, a saber:

"By whom oath of office may be administered.—The oath of office may be administered by any officer generally qualified to administer oath; but the oath of office of the members and officers of either house of the legislature may also be administered by persons designated for such purpose by the respective houses."

Este artículo es demasiado claro para necesitar más comentarios. Es evidente que el Senador y Representante puede calificarse prestando el juramento de su cargo ante cualquier funcionario autorizado para administrarlo; y la disposición de que también pueden administrar ese juramento personas designadas por cada cámara es solo de carácter permisivo, opcional. Y la mejor prueba de esto es que antes del advenimiento de la República el Senado había reconocido la validez del juramento de cargo prestado ante un Notario Público por otros Senadores de la minoría los Sres. Mabanag, García, Confesor y Cabili. A menos que estas cosas se tomen a broma, o la arbitrariedad se erija en ley—la ley de la selva, del más fuerte—no es concebible que el juramento ante Notario se declare válido en un caso y en otro se declare inválido, concurriendo las mismas circunstancias;

(c) También consta, en virtud de la estipulación de hechos y de los ejemplares del diario de sesiones que obran en autos como anexos, que los Senadores Vera, Diokno y Romero han estado cobrando todos sus sueldos y emolumentos como tales Senadores desde la inauguración del Senado hasta ahora, incluso naturalmente el tiempo en que se aprobó la resolución cuestionada. Es violentar demasiado la argucia el sostener que un miembro de una cámara legislativa puede cobrar todos sus haberes y emolumentos y, sin embargo, no ser legalmente miembro de la misma. El vulgo, maestro en la ironía y en el sarcasmo, tiene una manera cruda para pintar esta situación absurda: "Tiene, pero no hay". ¿Como es posible que las cámaras autoricen el desembolso de sus fondos a favor de unos hombres que, según se sostiene seriamente, no están legalmente cualificados para merecer y recibir tales fondos?

(d) Se arguye, sin embargo, que los Senadores Vera, Diokno y Romero no son miembros del Senado porque, en virtud de la Resolución Pendatun, se les suspendió el juramento y el derecho a sus asientos. Respecto del juramento, ya hemos visto que era válido, según la ley. Respecto de la suspensión del derecho al asiento, he

discutido extensamente este punto en mi disidencia en el asunto de Vera contra Avelino, supra, calificando de anticonstitucional y nula la suspension. Pero aun suponiendo que la misma fuera valida, los recurrentes alegan y arguyen que no por eso han dejado de ser miembros los suspendidos. La alegacion es acertada. La suspension no abate ni anula la calidad de miembro; solo la muerte, dimision o expulsion produce ese efecto (vease Alejandrino contra Quezon, 46 Jur. Fil., 100, 101; vease tambien United States vs. Dietrich, 126 Fed. Rep., 676). En el asunto de Alejandrino contra Quezon hemos declarado lo siguiente:

"Es cosa digna de observar que el Congreso de los Estados Unidos en toda su larga historia no ha suspendido a ninguno de sus miembros. Y la razon es obvia. El castigo mediante repension o multa vindica la dignidad ofendida de la Camara sin privar a los representados de su representante; la expulsion cuando es peimisible vindica del mismo modo el honor del Cuerpo Legislativo dando asi oportunidad a los representados de elegir a otro nuevo; pero la suspension priva al distrito electoral de una representacion sin que se le de a ese distrito un medio para llenar la vacante. Mediante la suspension el cargo continua ocupado, pero al que lo ocupa se le ha impuesto silencio." (Alejandrino contra Quezon, 46 Jur. Fil., 100, 101.)

La posicion juridica y constitucional de los 8 Representantes excluidos de la votacion es todavia mas firme. Consta igualmente, en virtud de la estipulacion de hechos y de los ejemplares del diario de sesiones obrantes en autos, que dichos 8 Representantes tambien se calificaron, al inaugurarse el Congreso, prestando el juramento de su cargo ante Notarios Publicos debidamente autorizados; que su juramento se deposito en la Secretaria de la Camara; que han estado cobrando desde la inauguracion hasta ahora todos sus sueldos y emolumentos, excepto dos los Representantes Taruc y Lava que han dejado de cobrar desde hace algun tiempo; que tambien han participado en algunas deliberaciones, las relativas al proyecto de resolucion para suspenderlos.

Pero entre su caso y el de los Senadores existe esta diferencia fundamental: mientras con respecto a estos ultimos la Resolucion Pendatun sobre suspension llevo a aprobarse adquiriendo estado parlamentario, en la Camara de Representantes no ha habido tal cosa, pues la resolucion de suspension se endoso a un comite especial para su estudio e investigacion, y hasta ahora la Camara no ha tomado sobre ella ninguna accion, ni favorable ni adversa. De modo que en el caso de los Representantes hasta ahora no hay suspension, porque de tal no puede calificarse la accion del Speaker y del macero privandoles del derecho de tomar parte en las deliberaciones y votaciones. Para quo una suspension produzca efectos legales y, sobre todo, constitucionales, tiene que decretarla la Camara misma, por medio de una resolucion debidamente aprobada, de acuerdo con los requisitos provistos en la Constitucion. Nada de esto se ha hecho en la Camara.

El Articulo XV de nuestra Constitucion, sobre enmiendas, dice que "El Congreso, en sesion conjunta, por el voto de tres cuartas partes de todos los miembros del Senado y de la Camara de Representantes votando separadamente, puede proponer enmiendas a esta Constitucion o convocar una convencion para dicho efecto." Donde la ley no distingue no debemos distinguir. La frase todos los miembros debe interpretarse como que incluye todos los miembros elegidos, no importa que esten ausentes o esten suspendidos; mas naturalmente cuando no estan suspendidos como en el caso de los ya citados 8 Representantes. El Juez Cooley, en su ya citada obra Constitutional Limitations, hace sobre este particular los siguientes comentarios que son terminantes para la resolucion de este punto constitucional, a saber:

"For the vote required in the passage of any particular law the reader is referred to the Constitution of his State. A simple majority of a quorum is sufficient, unless the Constitution establishes some other rule; and where, by the Constitution, a two-thirds or three-fourths vote is made essential to the passage of any particular class of bills, two-thirds or three-fourths of a quorum will be understood, unless the terms employed clearly indicate that this proportion of alt the members, or of all those elected, is intended. (A constitutional requirement that the assent of two-thirds of the members elected to each house of the legislature shall be requisite to every bill appropriating the public money or property for local or private purposes, is mandatory, and cannot be evaded

by calling a bill a 'joint resolution'.)

(Footnote: "Such a requirement is too clear and too valuable to be thus frittered away." *Allen vs. Board of State Auditors*, 122 Mich., 324; 47 L. R. A., 117.)

(Footnote: "By most of the constitutions either all the laws, or laws on some particular subjects, are required to be adopted by a majority vote, or some other proportion of 'all the members elected,' or of 'the whole representation.' These and similar phrases require all the members to be taken into account whether present or not. Where a majority of all the members elected is required in the passage of a law, an ineligible person is not on that account to be excluded in the count. (*Satterlee vs. San Francisco*, 23 Cal., 314.)" (*Cooley on Constitutional Limitations*, Vol. 1, p. 291.)

VIII

Los recurridos no cuestionan la personalidad o derecho de accion de los recurrentes para plantear el presente litigio. Sin embargo, en nuestras deliberaciones algunos Magistrados han expresado dudas sobre si los recurrentes tienen interes legal suficiente y adecuado para demandar y, por tanto, para invocar nuestra jurisdiccion en el presente caso. La duda es si el interes que alegan los recurrentes no es mas bien el general y abstracto que tiene cualquier otro ciudadano para defender la integridad de la Constitucion, en cuyo caso seria insuficiente para demandar ante los tribunales, los cuales, segun el consenso de las autoridades, no estan establecidos para considerar y resolver controversias academicas y doctrinales, sino conflictos positivos, reales, en que hay algun daño y perjuicio o amago de daño y perjuicio.

Creo que la personalidad o derecho de accion de los recurrentes es incuestionable. En primer lugar, 11 de ellos son miembros del Congreso, y alegan que se les privo del derecho de votar al considerarse la resolucion cuestionada y que si se les hubiese permitido votar dicha resolucion no hubiese obtenido la sancion de las tres cuartas-partes ($\frac{3}{4}$) que requiere la Constitucion. ¿Que mayor interes legal que este? Ellos dicen que sus votos hubieran sido decisivos, que con su intervencion parlamentaria hubiesen salvado al pais de lo que consideran amago de una tremenda calamidad publica—la concesion de iguales derechos a los americanos para explotar nuestros recursos naturales y utilidades publicas. ¿No es este amago de daño, para ellos individualmente y para el pais colectivamente, adecuado y suficiente para crear un interes legal? En el asunto de *Coleman vs. Miller*, supra, se suscito esta misma cuestion y se resolvio a favor de los recurrentes. Como ya hemos visto, estos eran 20 Senadores del Estado de Kansas que alegaban que en la propuesta ratificacion de la 18.^a Enmienda a la Constitucion Federal sus votos quedaron abatidos por el voto decisivo del Teniente Gobernador. La Corte Federal declaro que esto constituia interes legal suficiente y adecuado.

En segundo lugar, los recurrentes alegan ser ciudadanos, electores y contribuyentes de Filipinas. Naturalmente, como tales tienen derecho a participar en la explotacion de nuestros recursos naturales y operacion de utilidades publicas, con exclusion de los americanos y otros extranjeros. De ello se sigue logicamente que cualquier acto legislativo que anule y abrogue esa exclusividad afectara personalmente a sus derechos, amagandolos de un probable perjuicio. Esto, a mi juicio, crea un interes legal adecuado y suficiente para litigar. Esto no es un interes meramente academico, abstracto. (Vease *Hawke vs. Smith*, 253 U. S., 221, 227; 64 Law. ed., 871, 875; 40 Sup. Ct., 495; 10 A. L. R., 1504; veanse tambien *Leser vs. Garnett*, 258 U. S., 130, 137; 66 Law. ed., 505, 571 ; 42 Sup. Ct., 217; *Coleman vs. Miller*, 122 A. L. R., 698.)

En el asunto de *Hawke vs. Smith*, supra, el demandante alegaba ser "ciudadano y elector del Estado de Ohio, y como elector y contribuyente del Condado de Hamilton, en su nombre y en el de otros similarmente situados, presento una solicitud de prohibicion ante el tribunal del Estado para que se prohibiera al Secretario de Estado a que gastara fondos publicos en la preparacion e impresion de balotas para la sumision al electorado de la 18.^a

Enmienda a la Constitucion Federal para su ratificacion. La Corte Suprema Federal fallo que el demandante tenia interes legal y, por tanto, personalidad y derecho de accion para demandar.

En el asunto de Leser vs. Garnett, supra, los demandantes alegaban ser electores cualificados de Maryland y solicitaban la exclusion de ciertas mujeres del censo electoral por el fundamento de que la Constitucion de Maryland limitaba el sufragio a los varones y la 19.[a] Enmienda a la Constitucion Federal no habia sido validamente ratificada. La Corte Suprema Federal fallo tambien que los demandantes tenian interes legal suficiente y adecuado.

IX

Cuando se celebraron las audiencias en este asunto se le pregunto a uno de los abogados de los recurridos, creo que el mismo Secretario de Justicia, cual seria el remedio legal para los recurrentes, ya que se sostiene que en el presente caso se trata de una materia no judicial, injusticiable, y que, por tanto, los tribunales nada tienen que hacer. El Secretario de Justicia contesto: ninguno. Lo unico que los recurrentes pueden hacer es esperar las elecciones y plantear el caso directamente ante el pueblo, unico juez en las controversias de caracter politico. Esto mismo se dijo en el caso de Vera contra Avelino, supra, y reitero lo que alli he dicho sobre este argumento, a saber:

"Solo nos queda por considerar el argumento deprimente, desalentador de que el caso que nos ocupa no tiene remedio ni bajo la Coustitucion ni bajo las leyes ordinarias. A los recurrentes se les dice que no tienen mas que un recurso: esperar las elecciones y plantear directamente la cuestion ante el pueblo elector. Si los recurrentes tienen razon, el pueblo les reivindicara eligiendoles o elevando a su partido al poder, repudiando, en cambio, a los recurridos o a su partido. Algunas cosas se podrian decir acerca de este argumento. Se podria decir, por ejemplo, que el remedio no es expedito ni adecuado porque la mayoria de los recurridos han sido elegidos para un periodo de seis años, asi que no se les podra exigir ninguna responsabilidad por tan largo tiempo. Se podria decir tambien que en una eleccion politica entran muchos factores, y es posible que la cuestion que se discute hoy, con ser tan fervida y tan palpitante, quede, cuando llegue el caso, obscurecida por otros 'issues' mas presionantes y decisivos. Tambien se podria decir que, independientemente de la justicia de su causa, un partido minoritario siempre lucha con desventaja contra el partido mayoritario.

"Pero, a nuestro juicio, la mejor contestacion al argumento es que no cabe concebir que los redactores de la Constitucion filipina hayan dejado en medio de nuestro sistema de gobierno un peligroso vacio en donde quedan paralizados los resortes de la Constitucion y de la ley, y el ciudadano queda inerme, impotente frente a lo que el considera flagrante transgresion de sus derechos. Los redactores de la Constitucion conocian muy bien nuestro sistema de gobierno—sistema presidencial. Sabian muy bien que este no tiene la flexibilidad del tipo ingles—el parlamentario. En Inglaterra y en los paises que siguen su sistema hay una magnifica valvula de seguridad politica; cuando surge una grave crisis, de esas que sacuden los cimientos de la nacion, el parlamento se disuelve y se convocan elecciones generales para que el pueblo decida los grandes 'issues' del dia. Asi se consuman verdaderas revoluciones, sin sangre, sin violencia. El sistema presidencial no tiene esa valvula. El periodo que media de eleccion a eleccion es inflexible. Entre nosotros, por ejemplo, el periodo es de seis años para el Senado, y de cuatro años para la Camara de Representantes y los gobiernos provinciales y municipales. Solamente se celebran elecciones especiales para cubrir vacantes que ocurran entre unas elecciones generales y otras. Se comprendera facilmente que bajo un sistema asi es harto peligroso, es jugar con fuego el posibilitar situaciones donde el individuo y el pueblo no puedan buscar el amparo de la Constitucion y de las leyes, bajo procesos ordenados y expeditos, para proteger sus derechos." (Vera contra Avelino, pags. 363, 364.)

Fue Jefferson quien dijo que como medida de higiene politica era conveniente que el pueblo americano tuviera una revolucion cada veinte años. Parece que el gran democrata dijo esto no por el simple prurito de jugar con la

paradoja, con la frase, sino convencido de que la revolucion es el mejor antidoto para la tirania o los amagos de tirania.

Grande como es el respeto que merecen las opiniones del inmortal autor de la Declaracion de Independencia, creo que la revolucion es siempre revolucion, la violencia es siempre violencia: caos, confusion, desquiciamiento de los resortes politicos y sociales, derramamiento de sangre, perdida de vidas y haciendas, etcetera, etcetera. Asi que normalmente ninguno puede desear para su pais la violencia, aun en nombre de la vitalidad, de la salud publica.

Estoy convencido de que el mejor ideal politico es la revolucion sin sangre, esa que no pocas veces se ha consumado v. gr. en la historia contemporanea de Inglaterra, y aun de America misma. Y ese ideal es perfectamente realizable permitiendo el amplio juego de la Constitucion y de las leyes, evitando pretextos a la violencia, y no posibilitando situaciones de desamparo y desesperacion.

Por eso creo sinceramente que la mejor politica, la mejor doctrina judicial es la que en todo tiempo encauza y fomenta los procesos ordenados de la Constitucion y de la ley.

[1] Jose O. Vera, Ramon Diokno y Jose E. Romero.

[2] Senadores: Alejo Mabanag, Carlos P. Garcia, Eulogio Rodriguez, Tomas Confesor, Tomas Cabili, Jose O. Vera, Ramon Diokno, y Jose E. Romero.

Representantes: Juvenal Almendras, Paulino Alonzo, Apolinario Cabigon, Floro Crisologo, Gabriel Dunuan, Cosme B. Garcia, Agustin Y. Kintanar, Vicente Logarta, Francisco A. Perfecto, Cipriano P. Primicias, Nicolas Rafols, Jose V. Rodriguez, Juan de G. Rodriguez, Felixberto M. Serrano, Conrado Singson, George K. Tait, y Leandro A. Tojong.

Presidentes de Partido: Jose O. Vera, Jesus G. Barrera, Emilio Javier y Sofronio Quimson, Nacionalista Party, Democratic Alliance, Popular Front y Philippine Youth Party, respectivamente.

[3] Comision de Elecciones: Jose Lopez Vito, Francisco Enage y Vicente de Vera, respectivamente. Marciano Guevara, Paciano Dizon y Pablo Lucas, Tesorero, Auditor y Director de Imprenta, respectivamente.

[1] La politica de nacionalizacion de los recursos naturales y utilidades publicas incorporada en nuestra Constitucion no es una politica nueva, sino que trae bu origen de nuestro pasado remoto, de la historia colonial misma de España en Filipinas. Los primeros conflictos de los filipinos con los conquistadores tenfan por causa la propiedad de la tierra; los filipinos se esforzaban por reivindicar el dominio del suelo que creian dctentado por los colonizadores. Estos conflictos fueron agravandose con el tiempo condensandose en la formidable cuestion agraria que en las postrimerias del siglo diecinueve fue en gran parte la causa de la revolucion contra España. Las campañas de Rizal y de los laborantes, y el Katipunan de Bonifacio tomaron gran parte de su fuerza, de su valor combativo, de los agravioa provocados por la cuestion agraria. La Liga Filipina de Rizal estaba fundamentalmente basada en un ideario economico nacionalista, de control y dominio sobre la riqueza y recursos del pais.

"Cuando America establecid aqui su soberanta su mayor acierto consistio en echar los cimientos de su politica fundamental de 'Filipinas para los filipinos.' Primero el Presidents McKinley, y despues los Presidentes Taft y Wilson, consulidaron esta politica. El congreso aprobo leyes tendentcs a la conservacion de terrenos publicos y recursos naturales, entre ellas la Ley de 1.º de Julio de 1902 conocida por Ley Cooper. En estas leyes se limitaba y restringia la adquisicion y uso de bienes de dominio publico por particulares.

"Una prueba palmaria del celo del Congreso americano por mantener rigidamente la politica de conservacion del patrimonio de los filipinos fue la investigacion congresional provocada por el Congresista Martin, de Colorado, en relacion con la venta de terrenos de los frailes en Mindoro, a una compa ia americana en exceso

de las 1,024 hectareas fijadas en las leyes de terrenos publicos. Esto dio lugar a uno de los episodios mas famosos en la carrera del Comisionado Residente Quezon. Este relata su campaña en su autobiografia 'The Good Fight,' a saber:

" 'My next address to Congress took place when a congressional investigation was being urged by Congressman Martin of Colorado to determine how the Government of the Philippines was carrying out the policy laid down by Congress, that limited to 1024 acres the maximum area of government land that could be sold to corporations or individuals. This law had been enacted soon after the United States had taken the Philippines to prevent the exploitation of the Filipino people by capitalists, whether foreigners or natives. American capital interested in the sugar industry had acquired two very large tracts of land which the Philippine Government had bought from the friars with the funds from bonds issued under the security of the Philippine Government. The avowed purpose in buying these extensive properties from the Spanish religious orders was to resell them in small lots to Filipino farmers, and thus to do away with absentee landlordism which had been the most serious cause of the Philippine rebellion against Spain. The reasons given for the sale of these lands to American capital by the American official in charge of the execution of the congressional policy were twofold: First, that the act of Congress referred only to lands of the public domain but not to lands acquired by the Government in some other way. And second, that the sale of these lands was made in order to establish the sugar industry in the Philippines on a truly grand scale under modern methods, as had been done in Cuba. It was further alleged that such a method would bring great prosperity to the Philippines.

" 'I spoke in support of the proposed investigation, contending that the establishment of the sugar industry under those conditions would mean the debasement of the Filipinos into mere peons. 'Moreover,' I argued, 'large investments of American capital in the Philippines will inevitably result in the permanent retention of the Philippines by the United States.' At the climax of my speech I roared: 'If the preordained fate of my country is either to be a subject people but rich, or free but poor, I am unqualifiedly for the latter.'

" 'The investigation was ordered by the House of Representatives, and although the sales already made were not annulled, no further sales were made in defiance of the Congressional Act. (The Good Fight, by President Quezon, pp. 117-119.)'

"Para implementar la politica de nacionalizacion el gobierno filipino bajo la Ley Jones y la Ley del Commonwealth fundo con una gruesa capitalizacion las corporaciones economicas del Estado como el Philippine National Bank, National Development Company, National Cement Company, National Power Corporation, y otras.

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