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NOTE

OF POWERS: SEPARATION AND SUCCESSION

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The distinctive feature of government is the exercise of governmental power by some men over other men. Aristotle classified governmental power into three distinct kinds; legislative, executive, and judicial. Montesquieu adopted this classification and developed it into a modern principle of government[1] which is now widely accepted and followed by the democratic governments of the modern world.[2] This principle is what is now known as the principle of separation of powers.

The principle of separation of powers operates to confine legislative powers to the legislature, executive powers to the executive, and judicial powers to the judiciary. This principle prohibits the officers entrusted with each of these powers from encroaching upon the powers conferred upon the others and limits each officer to the exercise of only those powers which are appropriate to his own department and no other.[3]

This doctrine has gained widespread acceptance because it provides a means of insuring individual liberty and freedom,[4] for as pointed out by Montesquieu:

"When the legislative and executive powers are united in the same person or in the same body of magistrates, there can be no liberty; because

* LL.B., 1959.

[1] COREY, ELEMENTS OF DEMOCRATIC GOVERNMENT 81 (New ed. 1951); 3 TAÑADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES 710 (4th ed. 1953); FRANCISCO, PHILIPPINE POLITICAL LAW 143 (1955); MARTIN, POLITICAL LAW REVIEWER 53 (Rev. ed. 1958). But see Parker, *The Historic Basis of Administrative Law*, 12 RUTGERS LAW REVIEW 449 (1958): "Enthusiasts of the separation doctrine have attempted to trace it back to antiquity. The first of its prophets is said to be the inevitable Aristotle. Yet nothing could be farther fetched." "Prior to the American and French Revolutions, separation never existed as a part of any constitutional system of national government."

[2] It is interesting to note that Fascist dictatorships and Soviet law refuse to accept the doctrine of separation of powers. Fascist dictatorships claim that the separation of powers is "a sign of decay, of lacking in unity," while Soviet law claims that it is merely a "bourgeois fiction." Parker, *Historic Basis of Administrative Law*, 12 RUTGERS LAW REVIEW 464, 1 92 (1958).

[3] Kilbourn v. Thompson, 103 U.S. 168, 25 L. ed. 177 (1880); Abueva v. Wood, 45 Phil. 612 (1925); MARTIN, *op. cit. supra* note 1, at 53. But see RIVERA, LAW OF PUBLIC ADMINISTRATION 30 (1st. ed. 1955).

[4] CARREON, PHILIPPINE POLITICAL LAW 133 (Rev. ed. 1955).

apprehensions may arise lest that body should enact tyrannical laws, and execute them in a tyrannical manner. Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be then an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting laws, that of executing laws, that of executing the public resolutions, and of trying the causes of individuals."[5]

The framers of the American Constitution incorporated this principle in the government established under it.[6] Soon after the transfer of sovereignty over the Philippines from Spain to the United States, the latter introduced to this country the principle of separation of powers through the various organic laws which were made applicable in this country.[7]

The Filipino people, when it adopted its Constitution, confirmed this principle and made it a basic feature of the government established under such Constitution.[8] In the leading case of Government of the Philippines v. Springer,[9] our Supreme Court adopted a quotation from Madison stating that:

"If there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is that which separates the legislative, executive, and judicial powers."[10]

This doctrine has been so firmly imbedded in Philippine institutions that it is no longer debatable in this jurisdiction.[11]

The Constitution does not expressly provide in any single provision that the three powers of government should be exercised by three departments which shall be separate and independent of each other. However, the Constitution does provide, in three successive Articles, that the legislative

[5] MONTESQUIEU, ESPRIT DEL LOIS, Book XI, chap. VI (1748).
[6] The doctrine of separation of powers is claimed to be America's chief contribution to the science of government. Ohio v. Fulton, 99 Ohio St. 168, 124 N.E. 172, 177 (1919); Kilbourn v. Thompson, *supra*, at 190; MUNRO, THE GOVERNMENT OF THE UNITED STATES 57 (5th ed. 1947).
[7] President McKinley's Instructions to the Philippine Commission of 1900, Philippine Bill of 1902, Philippine Bill of 1907, Jones Law of 1916, and Tydings-McDuffie Law of 1934.
[8] ARUEGO, PHILIPPINE POLITICAL LAW 100 (1950); MALCOLM & LAUREL, PHILIPPINE CONSTITUTIONAL LAW 153 (3rd ed.); Araneta v. Dinglasan, 45 O.G. 4411 (1949),
[9] 50 Phil. 259, 284 (1927).
[10] 1 ANNALS OF CONG. 581, 582; Myers v. U.S. 272 U.S. 52, 71 L. ed. 160 (1926).
[11] Government of the Philippine Islands v. Springer, 50 Phil. 259; **aff'd**, 277 U.S. 189, 72 L. ed. 845; cf Barcelon v. Baker & Thompson, 5 Phil. 87 (1905); U.S. v. Bull, 15 Phil. 7 (1910); Severino v. Governor-General & Board of Occ. Negros, 16 Phil. 366 (1910); Province of Tarlac v. Gale, 26 Phil. 338 (1913); Forbes v. Chuco Tiaco & Crossfield, 16 Phil. 534 (1910); Conception v. Paredes, 42 Phil. 599 (1921); U.S. v. Ang Tang Ho, 43 Phil. 1 (1922); Abueva v. Woods, 45 Phil. 612 (1924); Alejandrino v. Quezon, 46 Phil. 83 (1924); People v. Vera, 65 Phil. 56 (1937).

power shall be vested in a Congress of the Philippines,[12] that the executive power shall be vested in a President of the Philippines,[13] and that the judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.[14] The principle of separation of powers is thus embodied in our Constitution, not by express provision, but by actual division and distribution of the governmental powers respectively among the three departments of the government. Whether by express provision or by actual distribution, the principle of separation of powers is just as firmly established in the Constitution.[15]

Article VII, Section 1, of the Philippine Constitution provides that:

"The Executive power shall be vested in a President of the Philippines."

This constitutional provision is unique in the sense that it vests in only one person one of the three powers of government. The other two powers of government are conferred by the Constitution upon bodies of persons. The constitutional provision does not state that the executive power shall be vested in the executive department but instead it decrees that the executive power shall be vested in a President of the Philippines. All executive power is thus concentrated by the Constitution in one single individual, the President, making him the most powerful official in our government. Whoever acts as President has all the executive power in his hands. This clearly spotlights the great importance of the President under our form of government.

To insure that there be always a President of the Philippines to exercise the executive power, the Constitution of the Philippines prescribes two sets of rules for presidential succession, in Article VII, Sections 6 and 8. The aforementioned sections provide as follows:

"Sec. 6. If, at the time fixed for the beginning of the term of President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President shall have failed to qualify, then the Vice-President shall act as President until a President shall have qualified, and the Congress may be law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be elected, and such person shall act accordingly until a President or Vice-President shall have qualified."

"Sec. 8. In the event of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress shall by law provide for the case of removal, death, resignation or

[12] Phil. Const. Art. VI, Sec. 11.
[13] Phil. Const. Art. VII, Sec. 1.
[14] Phil. Const. Art. VIII, Sec. 1.
[15] TAÑADA & FERNANDO, *op. cit. supra* note 1, at 704; TONGKO, THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES 80-81 (1953).

inability, both of the President and Vice-President declaring what officer shall then act as President and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

The succession of the Vice-President-elect to the Presidency in case of the President-elect's death, or failure to qualify, or the failure to choose a President before the time fixed for the beginning of his term, as well as the succession by the Vice-President to the President in the event of the latter's removal, death, resignation, or inability, had been thoroughly discussed by various authors[16] and will not be covered in this discussion. This work will be devoted to those portions of the constitutional provisions relating to the eventuality of both the President-elect's and Vice-President-elect's failure to qualify or the removal, death, resignation, or inability of both the President and Vice-President.

Pursuant to the authority granted by Article VII, Sections 6 and 8 of the Constitution, Congress enacted two laws providing for the order of presidential succession. The first of these laws is found in section 19 of the Revised Election Code[17] which provides as follows:

"When neither the President-elect nor the Vice-President-elect shall have qualified, as provided in Section Six, Article VII of the Constitution, or in case of the removal, death, resignation, or inability, both of the President and Vice-President, as provided in Section eight, Article VII of the Constitution, the President of the Senate shall act as President until the President-elect or the Vice-President-elect shall have qualified or their disability has been removed or a President has been elected.

"In case of permanent vacancy in the offices of President and Vice-President, the Congress shall determine by joint resolution whether or not a special election shall be held to elect a President and a Vice-President or only a President. In the affirmative case, the date on which the special election is to be held shall be fixed in the resolution and said date shall be stated in the proclamation to be issued in accordance with section twenty-two of this Code, which shall be signed by the Acting President. The officers elected shall qualify at twelve o'clock in the morning of the day next following the date of their proclamation by Congress and shall hold office until their successors, elected at the next regular election, shall qualify."

Soon after the above quoted law was passed, Congress encated a second law on the same subject, Republic Act No. 181, on June 21, 1947, section 1 of which provides:

"When neither the President-elect nor the Vice-President-elect shall have qualified, or in the event of the removal, death, or resignation of the President and the Vice-President or of the inability of both of them to discharge

[16] ROMANI, THE PHILIPPINE PRESIDENCY 54 (1956); Romeo P. Torres, *Presidential Succession*, 7 ATENEO L. J. 365 (1958); SILVA, PRESILENTIAL SUCCESSION (1951); Silva, *Presidential Succession and Disability*, 21 LAW AND CONTEMPORARY PROBLEMS 646 (1956); Volume 133 of the NORTH AMERICAN REVIEW is devoted to the question of presidential inability, containing the works of Butler, Cooley, and Trumbull; Curtis, *Presidential Inability*, 25 HARPER'S WEEKLY 631 (1881).

[17] R.A. No. 180.

the powers and duties of the office of President, the President of the Senate, or if there be none, or in the event of his removal, death, resignation, or of his inability to act as President, the Speaker of the House of Representatives, or if there be none, or in the event of his removal, death, resignation, or of his inability to act as President, the Senator or Representative elected by the Members of Congress in joint session shall act as President of the Philippines until the President or President-elect or the vice-President shall have been elected and shall have qualified."

The order of succession provided for in the above quoted laws is clearly violative of the principle of separation of powers established by the Constitution. They provide for the succession to the Presidency by officials of the legislative department only. Congress, through these laws, vests in its own officers or members the entire executive power which the Constitution, by actual division, seeks to withhold from the legislative department.

In violation of the basic principles in our Constitution, these laws seek to combine in the legislative department both the legislative and the executive powers of government. The dangers which would result from such a concentration of powers in one department of the government was precisely the very reason which prompted the inclusion of the separation of powers principle in our Constitution.[18] It is feared that, were the sovereign powers of government conferred in one person or body of persons, arbitrary rule and abuse of authority would inevitably result.[19] Men will always push what power they have to the limit; and if those who make the laws also enforce them, they can tyrannize over their fellowmen.[20] Human nature being what it is, no one body of men could be trusted with the monopoly of the powers possessed by government.[21]

A similar law was passed by the Congress of the United States on March 1, 1792. This law provided for the succession first of the President *pro tempore* of the Senate and then of the Speaker of the House of Representatives.[22] This law was criticized as the most ill-considered law ever passed by the United States Congress.[23] Madison pointed out that said law violated the principle of separation of powers.[24] He also pointed out that in case either the President *pro tempore* of the Senate or the Speaker of the House of Represntatives should succeed to the Presidency, they would still remain members of the legislative branch, and that the performance of

[18] People v. Vera, 65 Phil. 56 (1937); MARTIN, *op. cit. supra* note 1; ARUEGO, PHILIPPINE GOVERNMENT IN ACTION 67 (1st ed. 1953).

[19] MONTESQUIEU, *op. cit. supra* note 5; CARREON, *op. cit. supra* note 4.

[20] CORRY, *op. cit. supra* note 1, at 82.

[21] Gov't. of P.I. v. Springer, *supra*, at 304, (concurring opinion).

[22] 1 STAT. 239 (1792).

[23] CONSTITUTION OF THE UNITED STATES OF AMERICA 387 (Corwin ed. 1952).

[24] *Ibid*

executive functions would conflict with the exercise of their legislative duties.[25]

As a consequence of these constitutional and some other political objections, the Act of 1792 was repealed and superseded by a second law on presidential succession.[26] On January 19, 1886, the Congress of the United States enacted the Presidential Succession Act of 1886 which provided as follows:

"That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, daeth, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: **Provided,** That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extra-ordinary session, giving twenty days' notice of the time of meeting.

"Sec. 2. That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of the President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of office shall devolve upon them respectively."[27]

A perusal of the above provisions would readily show that the order of succession is limited to the officers of the executive department of the government. Section 2 of said law further requires that the officer to succeed to the Presidency should possess the constitutional qualifications for the office of President. This law is in conformity with the principle of separation of powers which is considered as the fundamental basis of every constitutional government and as representing the most important principle of government declaring and guaranteeing the liberties of the citizens. It further carries out the most important function of the principle of separation of powers by preventing the accumulation of powers in

[25] *Id.* at 388; Edward S. Corwin also states that: "The act thus violated the principle of the separation of powers by investing in an officer of the national legislature in his quality as such the full executive power..." CORWIN, THE PRESIDENT 67 (9148).
[26] CONSTITUTION OF THE UNITED STATES OF AMERICA 387 (Corwin ed. 1952).
[27] 3 U.S.C. Secs. 21-22, 3 U.S.C.A. Secs. 21, 22 (1940).

one department of government for such an accumulation of powers constitutes one of the chief characteristics and evils of tyrannical and despotic forms of government.[28]

Despite the apparent merits of the above quoted law, however, the Congress of the United States was not contented with it and, on July 18, 1947, enacted a third law on presidential succession, superseding the two previous laws on the subject. Agitations for a change in the American law on presidential succession commenced a few days after the death of President Roosevelt on April 12, 1958. By reason of the death of President Roosevelt, Vice-President Truman became the President of the United States, leaving the office of Vice-President vacant. The United States then did not have a Vice-President to succeed the President in the event of the latter's removal, death. resignation or inability. Under the then existing law on presidential succession. the Cabinet officers, in the order named in said law, would succeed to the office of President.[29]

Mr. James A. Farley attacked as undemocratic the power of the Vice-President. under the Act of 1886, once he has succeeded to the Presidency, to appoint his own successors. This criticism gained widespread support, causing President Truman to send the Congress of the United States a message urging a new Presidential Succession Act.[30] The President based his demand on the contention that in a democracy the President should not have the power to appoint his own successor. He further suggested that the Speaker should be named first in the order of succession, followed by the President *pro tempore* of the Senate.[31]

As a consequence of this agitation for a change in the law on the subject, Congress encated Public Law 199 on July 18, 1947, which is now the present law on presidential succession in the United States. Under this law, the Speaker of the House of Representatives is first in the line of succession, followed by the President *pro tempore* of the Senate, then by Cabinet officers in the following order: Secretary of State, Secretary of Treasury, Secretary of War,[32] Attorney-General, Postmaster-General, Secretary of the Navy,[33] Secretary of the Interior, Secretary of Agriculture. Secretary of Commerce, and Secretary of Labor. The Speaker of the House or the Pres-

[28] People v. Vera, *supra* note 18.
[29] CORWIN, *op. cit. supra* note 25. at 68. See also Robert S. Rankin, *Presidential Succession in the United States*, 8 JOURNAL OF POLITICS 44 (1946).
[30] U.S. CONG. SERV. 1084-1086 (79th Cong. 1st Sess. 1945); 91 CONG. REC. 6282-6281 (June 19, 1945); CORWIN, *op. cit. supra* note 29.
[31] President Truman believed that the officers who should be first in the order of succession should be elective officers; and of all elective officers, he argued, "the Speaker is the official in the Federal government whose election next to that of the President and Vice-President can be most accurately said to stem from the people themselves." 91 CONG. REC. 6382-6383 (1945).
[32] By Sec. 202 (a) of Public Law 253 of the 80th Congress, 1st session, approved July 26, 1947. the Secretary of War and the Secretary of the Navy were stricken from the line of succession and the Secretary of Defense, whose office Public Law 253 created, was inserted.
[33] *Ibid*

ident *pro tempore* of the Senate must resign his post as well as his seat in Congress, and the Cabinet officer must likewise resign from his post, when he succeeds to the office of President.[34] The officer acting as President continues to act as such until the expiration of the current presidential term except when his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and Vice-President-elect to qualify, in which case he shall act only until a President or Vice-President qualifies, or when his discharge of such powers and duties is founded on the inability of the President or Vice-President, in which case he shall act only until the removal of such disability.

The law further requires that the Cabinet officer who is to succeed must be eligible to the office of President under the Constitution, not under impeachment, and appointed prior to the death, resignation, removal, inability, or failure to qualify of the President *pro tempore* of the Senate.

This law, at first glance, seems to bring back the constitutional objections raised against the Act of 1792 by including the Speaker of the House and the President *pro tempore* of the Senate in the order of succession.[35] However, such objections are avoided by the provisions of the law which requires the above mentioned officers to resign from their posts and seats in Congress before succeeding to the Presidency.[36]

Our law on presidential succession, on the other hand, does not contain any provision requiring the legislative officer to resign his post and seat in Congress before succeeding to the office of President. This gives the legislative officer double powers, one incompatible with the other under our Constitution, executive and legislative.

Article VI, Section 16 of the Constitution of the Philippines provides that:

"No Senator or Member of the House of Representatives may hold any other office or employment in the government without forfeiting his seat, * * *"

This provision of the Constitution is violated by Republic Act No. 181 when it vests in a legislative official the power to act as President while at the same time retaining his seat in Congress. The secret of civil liberty lay in the reserving of each type of power to different persons or bodies of persons. One man or group of men should exercise substantially all legislative power and at the same time have no extensive share in or control over executive or judicial power.[37] The three branches of the government should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expanded to blend them no more than

[34] Public Law 199, subsec. (a) par. (1), subsec. (b), and subsec. (d) par. (3), 3 U.S.C. 19.
[35] *Op. cit. supra* note 23; CORWIN, *op. cit. supra* note 25.
[36] See note 32 *supra*.
[37] CORRY, *op. cit. supra* note 1, at 82; cases cited note 11 *supra*.

it affirmatively requires.[38] No well organized government or business even can be well managed if one department can enter upon the field of another and attempt to administer or interfere in the administration of the other.[39]

The above constitutional provision clearly places the executive and the legislative officials into two separate water-tight compartments. Members of Congress have to devote their full time and attention to their legislative duties.[40] If a member of Congress is prohibited from holding office in a government-owned or controlled corporation invested with the sovereign functions of government, and in those corporations created to carry out the governmental policy,[41] much more is he prohibited from holding the office of President in which all executive power is vested. A member of Congress could not even act as a mere member of the Board of Regents of the University of the Philippines, or of the Textbook Board, or of the boards of directors of different governmental enterprises and similar bodies,[42] because the holding of such posts would violate the provision of the above quoted constitutional prohibition, which prohibition is but another manifestation of the separation of powers principle in our Constitution.[43]

Even if Republic Act No. 181 were amended to include a provision requiring that the Senate President or the Speaker of the House should resign from his post and seat in Congress and the member of Congress should resign from his seat the moment that he succeeds to the office of President, it would still be doubtful whether said law would then be in conformity with our Constitution. It should be borne in mind that impeachments of the President and the Vice-President are initiated by the House of Representatives[44] and tried by the Senate.[45] Furthermore, the question as to who shall determine the existence of presidential inability has not yet been settled and among the solutions suggested is that Congress, by joint or concurrent resolution, should declare that presidential disability exists and require the person first in the order of succession to act as President.[46]

Under the previous organic laws of the Philippine[47] the principle of separation of powers was lenient and permitted the holding by executive

[38] MADISON, THE FEDERALIST, No. 47; Myers v. U.S., *supra*.
[39] Abueva v. Woods, *supra*; Barcelon v. Baker & Thompson, *supra*; U.S. *v.* Bull, *supra*.
[40] SINGCO, PHILIPPINE POLITICAL LAW 139 (10th ed. 1954).
[41] Opinion, Sec. of Justice, No. 230, c-1941.
[42] SINGCO, *op. cit. supra* note 40; MARTIN, *op. cit. supra* note 1, at 95-96.
[43] CARREON, PHILIPPINE POLITICAL LAW 173 (1955); SINGCO, *op. cit. supra* note 40, at 139.
[44] Phil. Const. Art. IX, Sec. 2.
[45] Phil. Const. Art. IX, Sec. 3; President Truman, in his message to Congress, stated: "Some of the events in the impeachment proceedings of President Johnson suggested the possibility of a hostile Congress in the future seeking to oust a Vice-President who had become President, in order to have the President pro tempore of the Senate become President." 91 CONG. REC. 6392 (1945), U.S. CONG. SERV. 1085 (79th Cong. 1st sess. 1945).
[46] CARREON, *op. cit. supra* note 43, at 228; Silva, *op. cit. supra* note 16, at 662.
[47] See note 7; SINGCO, *op. cit. supra* note 40, at 137.

officers of legislative positions and the holding by legislative officers of offices belonging to the executive department. The then Chief Executive in the Philippines was also the presiding officer of the Philippine Commission in the Commission government of the Philippines under the Instructions of the President and the Philippine Bill. Some members of the Commission were at the same time heads of some executive departments of the government.[48] Under the Jones Law, members of the Philippine Legislature could hold executive positions other than those falling under the classes expressly prohibited by the organic law.[49]

With the promulgation of the Constitution, however, this lenient application of the principle of separation of powers came to an end.[50] Officials of one department are now prohibited from holding offices pertaining to another department.[51] The President is no longer the presiding officer of Congress and Senators and Representatives are now prohibited from holding any other office or employment in the government without forfeiting his seat.[52]

Such a departure from the law and practice observed in this country since the very first days of American administration is indeed very significant. The framers of our Constitution and the Filipino people who ratified this Constitution clearly intended to make the principle of separation of powers more rigid in its application. Having in mind, perhaps, the Filipino's nature and our peoples tendency to concentrate all governmental power in one person, the framers of our Constitution inserted therein provisions which insure that, in the future, no such concentration of powers in one person or body of persons would ever occur. In the words of Thomas Jefferson: "When it comes to a question of power, trust no man, bind him down from mischief, by the strong chains of the Constitution."[53]

This intention of the Constitution to foster a more complete separation of the powers of government is further shown by the fact that, unlike in the United States Constitution where the Vice-President is also the President of the Senate, no such provision is found in the Philippine Constitution. The absence of such a provisoin is rendered more significant by the fact that the

[48] Severino v. Gov.-Gen., 16 Phil. 366 (1910); SINGCO, *op. cit. supra* note 40, 137. According to the late President Roxas, in his speach as a delegate to the Constitutional Convention, the practice of appointing members of the legislative department to the Cabinet was accepted only because of the desire of the Filipino people to democratize the Executive who was at that time appointed by the President of the United States and was legally responsible only to the latter. By appointing members of the Legislature to the Cabinet, the then Executive could be made more responsive to the will of the Filipino people. 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 307 (1949).

[49] ARUEGO, *op. cit. supra* note 48, at 302-315; SINGCO, *op. cit. supra* note 40, at 137.

[50] *Id.* at 308; *id.* at 139.

[51] *Ibid.*

[52] Phil. Const. Art. VI, Sec. 16.

[53] Quoted by Justice Johnson in his concurring opinion in Gov't. of P.I. v. Springer, *supra*, at 304 (concurring opinion).

principle of separation of powers was fundamentally copied by us from the American Constitution.[54]

Perhaps it may be argued that the vacancy of the Presidency creates such an emergency as to justify the solution provided by R.A. No. 181; that under such occasion, when prompt action is imperative, the principle of separation of powers becomes a positive deterrent to the protection of the interests for which the government is precisely organized. These arguments are answered by our Supreme Court when it held that the Constitution has set up the system of separation of powers "with all its difficulties and shortcomings, in preference to the co-mingling of powers in one man or group of men."[55] Justice Brandeis of the United States Supreme Court further answered these arguments by stating that: "The doctrine of separation of powers was adopted x x x not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy."[56]

The constitutional provisions authorizing Congress to provide a solution in cases of vacancy in the top executive position should be viewed in its proper perspective. It should not be understood as an authorization for Congress, in formulating the solution, to violate the basic principles of the very Constitution from which it derives its authority.[57] Congress cannot enact a law that would contravene the fundamental principles woven through the fabric of the Constitution.[58] In providing the solution, Congress must ever take into consideration the principles upon which the Constitution, from which it derives its powers and even its very existence, is founded. The powers vested in Congress by the Constitution is subject to implied limitations arising by necessary implication from the nature of the powers conferred and of the government established by such Constitution. Among the fundamental principles underlying the Constitution are: the separation of powers; the supremacy of the Constitution; the system of checks and balances; and the principle that ours is a government of laws, and not of men.[59]

It may again be argued that since the exercise of executive powers by the legislative official is merely temporary, it does not violate the provisions of the Constitution. Since when did the short duration of an offense justify its commission? Permanent or temporary, such an accumulation of powers in one person violates the basic principles of the Consti-

[54] FRANCISCO, PHILIPPINE POLITICAL LAW 143 (1955); Recto, *Our Constitution*, 1 PHILIPPINE BENCH AND BAR 5 (1949).

[55] Araneta v. Dinglasan, 45 O.G. 4411, 4421 (1949).

[56] Myers v. U.S., 272 U.S. 52, 71 L. ed. 160 (1926).

[57] MADISON, THE FEDERALIST, Nos. 47, 76; U.S. v. Myers, *supra*.

[58] ARUEGO, *op. cit. supra* note 8.

[59] Vargas v. Rillaroza, 45 O.G. 2847 (1948); ARUEGO, *op. cit. supra* note 8; MALCOLM & LAUREL, *op. cit. supra* note 8.

tution and should never be countenanced. Furthermore, it may constitute an opportunity for an ambitious person to arrogate unto himself, not only the powers granted by the law in question but, through the use of the powers so granted, other powers in violation of the Constitution and to the detriment of the nation. As already stated, no single person or body of persons could be trusted with an accumulation of the powers of government[60] for a person would push whatever powers he has to the utmost, resulting in the oppression and deprivation of liberty of other persons.[61]

Perhaps one might ask: "What about the system of checks and balances woven into the framework of our Constitution?" The law in question renders nugatory the system of checks and balances established by the Constitution.[62] Through the exercise of his executive powers, the legislative official acting as President could call Congress in special session and make recommendations for legislation to Congress. Then, acting in his capacity as presiding officer or member of either house of Congress, he could be instrumental in enacting the laws recommended by him as Chief Executive. Later, as President, he could approve the laws which he helped to enact as a member of Congress and which, as President, he had previously recommended to be considered by Congress convened by him in special session. He could then engineer the passage of any law through the process above illustrated. If the Supreme Court should declare his acts unconstitutional. he could easily bring about impeachment proceedings against members of the Court since he is a member either of the House which initiates impeachment proceedings or of the Senate which possesses the sole power to try such proceedings. After a Justice of the Supreme Court had been impeached, he could, as President, appoint another more favorable to his cause and, if he were at the same time the Senate President, he could approve such appointment when the same is presented to the Commission on Appointments of which he is the chairman. These illustrations may be far fetched and improbable but they are not altogether impossible for: "When it comes to a question of power, trust no man, bind him down from mischief, by the strong chains of the Constitution."[63] We must not and could not take chances when the sacred

[60] CORRY, *op. cit. supra* note 20.
[61] See note 21.
[62] Delegate to the Constitutional Convention, Manuel Roxas, opposed a proposed amendment to the draft of the Constitution allowing members of the legislature the power to hold executive offices. He argued that "there is one other element in a presidential system which is antagonistic to the amendment. It is the system of checks and balance. The President performs his functions not only as the agency which executes the law, but as a check to the Legislature in the formulation of the laws. x x x When it is proposed to appoint members of the Legislature in the Cabinet under the assumption that thereby the Legislature may be represented, what happens? You destroy the existence of the check because under that theory members of the Legislature, the Cabinet officers who are already members of the Legislature, would discharge the functions of the executive to check the legislature." ARUEGO, *op. cit. supra* note 48, at 307.
[63] See note 53.

principles of the Constitution and the liberty, freedom and interest of our people which are protected by such principles are at stake.

Another interesting question would result if the Senate President of the Speaker of the House, pursuant to the provisions of Republic Act No. 181, were to act as President. The law requires that on failure to qualify, or the death, removal, resignation, or inability of both the President and the Vice-President, the President of the Senate or if there be none, or in the event of his removal, death, resignation, or inability to act as President, then the Speaker of the House of Representatives shall act as President. It should be noted that the person to act as President must be the President of the Senate, or the Speaker of the House. However, the Senate President and the Speaker enjoy their rights and privileges as members of Congress. The position of such officers is conferred on them not by the people but by their respective houses. The office of the Senate President and the Speaker depends exclusivly upon the will of the majority of their respective houses of Congress. The rule of the Senate and of the House about tenure of the Senate President and of the Speaker is amenable at any time to the will of that majority.[64] It seems, therefore, that the acting President of the Philippines could be removed from such position by the mere majority vote of a house of Congress. Furthermore, since the law in question does not provide that the removal of the disability of an individual higher in the order of succession shall terminate the service of the person already occupying the position, the position of acting President would keep transferring from one person to another by the simple expedient of a chamber of Congress' removing and then electing a new presiding officer.

There is, therefore, a great need for a change in our law on presidential succession. We are confident and infinitely trust that, bearing in mind the fundamental principles of our Constitution, our legislators could supply the correct solutions to the vexatious problems presented by the present law on presidential succession. Better still, since there is a current move to introduce amendments to the Constitution, this question could be settled once and for all by an appropriate amendment to the Constitution.

[64] Avelino v. Cuenco, 83 Phil. 17 (1949); MARTIN, *op. cit. supra* note 1, at 82.