Legal and Political Aspects of Constitutional Amendment

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I. INTRODUCTION

Whenever a move is initiated to amend the Constitution, disputes usually arise whether the proposal to amend the Constitution has complied with the constitutional procedures. In the structure of government established by the Constitution, it is the Judiciary that is entrusted with the task of resolving these disputes. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent limits thereof.[1]

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In the light of the proposal to amend the Constitution, it is timely and appropriate to revisit judicial review and the scope of its power.

II. JUDICIAL REVIEW

A. Justiciability of Proposal to Amend the Constitution

The first decision of the Supreme Court involving the justiciability of the proposal to amend the Constitution involved the 1947 case of *Mabanag v. Lopez Vito*,[2] which involved the Parity Amendment. The petitioners argued that the resolution proposing to adopt the Parity Amendment had not been approved by at least three-fourths vote of the members of the Senate and of the House of Representatives. The Senate did not allow three senators to take their oath of office on the ground that election protests had been filed against them because of terrorism of voters in four provinces. Similarly, the House of Representatives did not allow eight congressmen to take their seats on the ground of irregularities in their election. Admittedly, if these senators and congressmen were to be included in computing the three-fourths majority vote to propose the adoption of the Parity Amendment, the affirmative votes would fall short of the three-fourths majority required in Section 1, Article XV of the 1935 Constitution.

However, the Supreme Court declined to decide on the merits of the case on the ground that the controversy involved a political question. The majority opinion reasoned:

> 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.[3]

The Supreme Court unanimously reversed this doctrine in the case of *Gonzales v. Commission on Elections*,[4] when it held:

> "Since, when proposing, as a constituent assembly, amendments to the Constitution, the members of Congress derive their authority from the Fundamental Law, it follows, necessarily, that they do not have the final say

1. Angara v. Electoral Commission, 63 Phil. 139, 187 (1936).
2. Mabanag v. Lopez Vito, 78 Phil. 1 (1947).
3. *Id.* at 4-5.
4. Gonzales v. Commission on Elections, 21 SCRA 774 (1967).

on whether or not their acts are within or beyond constitutional limits. Otherwise, they could brush aside and set the same at naught, contrary to the basic tenet that ours is a government of laws, not of men, and to the rigid nature of our Constitution. Such rigidity is stressed by the fact that, the Constitution expressly confers upon the Supreme Court, the power to declare a treaty unconstitutional, despite the eminently political character of treaty-making power.

In short, the issue whether or not a Resolution of Congress — acting as a constituent assembly — violates the Constitution is essentially justiciable, not political, and, hence, subject to judicial review, and, to the extent that this view may be inconsistent with the stand taken in *Mabanag v. Lopez Vito*, the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point.[5]

This ruling has been consistently followed in the subsequent decisions of the Supreme Court.[6]

B. Requisites of Judicial Review

Subject to exceptions, there are four requisites for the exercise of the power of judicial review: (1) there must be an actual controversy; (2) the constitutional issue must be raised by the proper party; (3) the constitutional issue must be raised at the earliest opportunity; and (4) adjudication of the constitutional issue must be necessary to the determination of the case.[7]

1. Actual Controversy

In *Tan v. Macapagal*,[8] the Supreme Court refused to rule on the petition asking it to declare that under the power granted by Section 1, Article XV of the 1935 Constitution to the Constitutional Convention of 1971 to amend the Constitution of 1935, it could not discuss and adopt proposals to adopt any form of government other than the presidential form of government. The Supreme Court explained:

More specifically, as long as any proposed amendment is still unacted on by it, there is no room for the interposition of judicial oversight. Only after it has made concrete what it intends to submit for ratification may the

5. *Id.* at 787.

6. *See* Tolentino v. Commission on Elections, 41 SCRA 702 (1971); Planas v. Commission on Elections, 49 SCRA 105 (1973); Javellana v. Executive Secretary, 50 SCRA 30 (1973); Sanidad v. Commission on Elections, 73 Phil. 323 (1976); Santiago v. Commission on Elections, 270 SCRA 106 (1997).

7. People vs. Vera, 65 Phil. 56, 82, 87-88 (1937).

8. Tan v. Macapagal, 43 SCRA 677 (1972).

appropriate case be instituted. Until then, the courts are devoid of jurisdiction.[9]

2. Standing

In *Kilosbayan, Inc. v. Morato*,[10] the Supreme Court pointed out that standing is a concept that is peculiar to constitutional law:

The difference between the rule on standing and real party in interest has been noted by authorities thus: '[i]t is important to note ... that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party in interest or has capacity to use. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas.'[11]

Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been persónally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence[,] the question in standing is whether such parties have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[12]

In *David v. Macapagal-Arroyo*,[13] the Supreme Court summarized its rulings on standing in the following words:

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

1. cases involve constitutional issues;
2. for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
3. for voters, there must be a showing of obvious interest in the validity of the election law in question;

9. *Id.* at 681-82.

10. Kilosbayan, Inc. v. Morato, 246 SCRA 540 (1975).

11. *Id.* at 562 (citing JACK H. FRIEDENTHAL, MARY KAY KANE & ARTHUR R. MILLER, CIVIL PROCEDURE 328 (1985)).

12. *Id.* at 562-63 (citing Baker v. Carr, 369 U.S. 187, 7 L.Ed.2d. 633 (1962)).

13. David v. Macapagal-Arroyo, 489 SCRA 160, 221-22 (2006).

4. for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

5. for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.[14]

It is when a case involves an issue of transcendental importance when the Judiciary adopts a posture of liberality and allows taxpayers, voters and Filipino citizens to raise the issue even if they may not strictly qualify as real parties in interest under Section 2, Rule 3 of the Rules of Court.[15]

In *Francisco v. House of Representatives*,[16] the Supreme Court defined the norms for determining when the issues involved in a case is of transcendental importance:

> There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[17]

Tested by these criteria, the question of whether or not the procedure for amending the Constitution has been followed is undisputably of transcendental importance.

However, it is not mandatory for the Judiciary to entertain a suit filed by a taxpayer, voter or Filipino citizen. It is discretionary with the courts to determine whether or not it will entertain such a case.[18]

3. Lis Mota

In *Tolentino v. Commission on Elections*,[19] the parties extensively argued on the issue of whether or not the Constitutional Convention of 1971 had the

14. *Id.* at 220-21.

15. 1997 RULES OF CIVIL PROCEDURE, rule 3, § 2.

> A real party in interest is the party who stand to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be instituted in the name of the real party in interest.

16. Francisco v. House of Representatives, 415 SCRA 44 (2003).

17. *Id.* at 139.

18. Tan vs. Macapagal, 43 SCRA 677, 680 (1972).

19. Tolentino v. Commission on Elections, 41 SCRA 702 (1971).

power to order a plebiscite on a proposed amendment to the 1935 Constitution. However, the Supreme Court declined to rule on it, because it found it unnecessary to do so. It disposed of the case without touching on this issue.[20]

III. PROCEDURE FOR AMENDING THE CONSTITUTION

A. Power to Propose Amendments

1. Congress

The present Constitution provides that any constitutional amendment or revision may be proposed by: (1) the Congress, upon a vote of three-fourths of all its Members; or (2) a constitutional convention.[21]

Although this provision does not expressly indicate that the Senate and the House of Representatives must vote separately when they propose amendments to the Constitution, this is the mode for voting that should be adopted. It is inherent in a bicameral legislative for the two houses to vote separately. Otherwise, the purpose of having the Senate as a second house will be rendered nugatory. If the two houses will vote jointly, the House of Representatives can outvote the Senate. According to Commissioner Francisco Rodrigo, "[e]ven on constitutional amendments, where Congress meets in joint session, the two Houses vote separately. Otherwise, the Senate will be useless; it will be sort of absorbed by the House considering that the Members of the Senate are completely outnumbered by the Members of the House.[22]

When the Constitutional Commission approved Article XVII of the Constitution, it had not yet decided whether the legislature would be unicameral or bicameral. Commissioner Jose Suarez, the Chairman of the Committee on Amendments and Transitory Provisions explained that if the legislature would be bicameral, the voting would still be the same, as shown by the following interpellation:

> Mr. Regalado: I also notice that both Sections 1 and 2 are premised on the anticipation that the Commission, not only the Committee, will opt for a unicameral body. In the event that a bicameral legislative body will carry the day, has the Committee prepared contingency proposals or resolutions?
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> Mr. Suarez: Yes, in the situation, we would probably include the words IN JOINT SESSION ASSEMBLED.
>
> Mr. Regalado: But still maintaining the same number of votes?

20. *Id.* at 726.

21. PHIL. CONST. art. XVII, § 1.

22. II RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 493.

Mr. Suarez: The Commissioner is right.[23]

Commissioner Ambrosio Padilla, who was a member of the Committee on Amendments and Transitory Provisions and former senator, explained the manner of voting under Section 1, Article XVII: "[a]s the Legislative Department consists of two chambers, the Senate and the House of Representatives, the votes should be separate in each chamber and not jointly in one session assembled."[24]

Rev. Joaquin Bernas, S.J., another member of the Constitutional Convention, shares this view:

> It is also submitted, however, that what is essential is that both Houses vote separately. This is because the power to propose amendments is given not to a unicameral body but to a bicameral body. The meaning of a constitutional command can also be drawn from the known governmental structure set up by the Constitution.[25]

After the Constitutional Commission decided to adopt a bicameral rather than a unicameral legislature, it forgot to amend Sections 1 and 3, Article XVII of the Constitution so as to state expressly that the Senate and the House of Representatives shall vote separately. However, this lapse in draftsmanship may be disregarded, because this was the intention of the Constitutional Commission.[26]

Since Section 1, Article XVII of the Constitution does not provide that in proposing amendments to the Constitution, the Senate and the House of Representatives must be assembled in joint session, they may separately formulate amendments, pass them to the other house, and settle their differences through a conference committee. They may also assemble in joint session and vote separately on proposed amendments.[27]

Section 3, Article XVII of the Constitution provides that Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.[28]

Congress can propose amendments to the Constitution and call a constitutional convention at the same time, because both powers have been

23. *Id.* at 375.

24. AMBROSIO B. PADILLA, 3 THE 1987 CONSTITUTION OF THE PHILIPPINES 679 (1988).

25. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1298 (2003 ed.).

26. Sarmiento v. Mison, 156 SCRA 549, 563 (1987).

27. BERNAS, *supra* note 25, at 1298.

28. PHIL. CONST. art. XVII § 3.

conferred upon it by the Constitution.[29] These two powers constitute the constituent powers of Congress. The exercise of one does not exhaust the constituent powers of Congress and does not preclude the exercise of the other.

2. Constitutional Convention

There are two ways of calling a constitutional convention. First, Congress itself by a vote of at least two-thirds majority of the Senate and the House of Representatives may call a constitutional convention. Second, Congress by a majority of all the members of the Senate and the House of Representatives may submit to the registered voters the question of calling a constitutional convention.[30]

As in the case of the voting to propose amendments to the Constitution, the Senate and the House of Representatives should vote separately. Otherwise, the congressmen will outnumber the senators.[31] Similarly, the Senate and the House of Representatives may vote separately in a joint session or in separate session.[32]

By virtue of its power to call a constitutional convention, Congress has the implied power to prescribe the qualifications, number, apportionment, and compensation of the delegates to the constitutional convention and to appropriate funds for the election of the delegates and the operation of the constitutional convention.[33]

Congress can also require any public officer who runs for delegate to the constitutional convention to resign his office. This is to prevent him from taking advantage of his public office to advance his candidacy.[34] Likewise, the elected delegates to the constitutional convention can be disqualified from holding any public office until the constitutional convention has adjourned. The purpose of this is to insulate the delegates from conflict of interest and to ensure their dedication of their full time to their duties as delegates.[35]

Congress can ban political parties and other organizations from intervening in the nomination of candidates for the constitutional convention and from supporting any candidate in the election. The purpose

29. Gonzales v. Commission on Elections, 21 SCRA 774, 795 (1967).

30. PHIL. CONST. art. XVII § 3.

31. *See* BERNAS, *supra* note 25, at 1298; *see also* PADILLA, *supra* note 24, at 688.

32. BERNAS, *supra* note 25, at 1298.

33. Imbong v. Commission on Elections, 35 SCRA 28, 33 (1970).

34. In re Subido, 35 SCRA 1, 7 (1970).

35. *Imbong*, 35 SCRA at 37 (1970).

of this is to insulate the election of the delegates from partisan political activities and to accord them equal chances to be elected.[36]

Congress can lay down the details for the election of the delegates to a constitutional convention either by means of a resolution it approved as a constituent assembly or by means of a law it enacted as a regular legislature.[37]

Once a constitutional convention is organized, it is free to adopt its own rules of procedure.[38]

While a constitutional convention is independent of any department of the government, the constitutionality of its actions can be attacked in court. Since it owes its existence to the Constitution and derived its powers from it, it can be haled to court if it exceeds the limits of its powers.[39]

3. Initiative

An innovation introduced in the Constitution for amending it is through initiative. Section 2, Article XVII of the Constitution provides:

> Amendments to the Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right.
>
> This provision is inoperative without an implementing law.[40]

In a split decision in the case of *Santiago v. Commission on Elections*,[41] the Supreme Court declared Republic Act No. 6735, also known as the Initiative and Referendum Act,[42] inadequate for implementing this provision.

36. *Id.* at 42-43.

37. *Id.* at 33; *In re Subido*, 35 SCRA at 6.

38. BERNAS, *supra* note 25, at 1299.

39. Tolentino v. Commission on Elections, 41 SCRA 702, 715 (1971).

40. *See* I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 391, 402; *see also* Santiago v. Commission on Elections, 270 SCRA 106, 136 (1997).

41. Santiago v. Commission on Elections, 270 SCRA 106 (1997).

42. *Id.* at 131 (citing An Act Providing for a System of Initiative and Referendum and Providing Funds Therefore [Initiative and Referendum Act], Republic Act No. 6735 (1989)).

In this case, the respondents filed a petition to amend the Constitution by abolishing the term limits for elective public officials. The petition was not supported by the signatures of at least twelve percent of the registered voters. Instead, the respondent asked the Commission on Elections to assist them in gathering the signatures.

The majority opinion penned by Justice Hilario Davide, Jr. which reflected the votes of eight members of the Supreme Court, rationalized its conclusion by saying:

> But unlike in the case of the other systems of *initiative*, the Act does not provide for the contents of a petition for initiative on the Constitution. Section 5, paragraph (c) requires, among other things, statement of the *proposed law sought to be enacted, approved or rejected, amended or repealed*, as the case may be. It does not include, as among the contents of the petition, the provisions of the Constitution sought to be amended, in the case of initiative on the Constitution.
>
> ...
>
> While the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), no subtitle is provided for initiative on the Constitution. This conspicuous silence as to the latter simply means that the main thrust of the Act is initiative and referendum on national and local laws.[43]

On the other hand, the dissenting opinion penned by Justice Reynato Puno, which embodied the view of five members of the Supreme Court, found the said law sufficient:

> First, the policy statement declares:
>
> > Sec. 2. Statement of Policy. — The power of the people under a system of initiative and referendum to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of this Act is hereby affirmed, recognized and guaranteed.
>
> Second, the law defines 'initiative' as 'the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose,' and 'plebiscite' as 'the electoral process by which an initiative on the Constitution is approved or rejected by the people.'
>
> Third, the law provides the requirements for a petition for initiative to amend the Constitution. Section 5(b) states that '[a] petition for an initiative on the 1987 Constitution must have at least twelve per centum of the total number of registered voters as signatories, of which every legislative district must be represented by at least three per centum of the

43. *Id.* at 147.

registered voters therein.' It also states that '[i]nitiative on the Constitution may be exercised only after five years from the ratification of the 1987 Constitution and only once every five years thereafter.'

Finally, Republic Act No. 6735 fixes the effectivity date of the amendment. Section 9 (b) states that '[t]he proposition in an initiative on the Constitution approved by a majority of the votes cast in the plebiscite shall become effective as to the day of the plebiscite.'[44]

However, Justice Jose Vitug refused to vote on the sufficiency of Republic Act No. 6735. He felt no need to express his view on this issue, since the petition was deficient, because it was not supported by the signatures of at least twelve per cent of the registered voters. He explained:

Instead of complying with the constitutional imperatives, the petition would rather have much of its burden passed on, in effect, to the COMELEC. The petition would require COMELEC to schedule 'signature gathering all over the country,' to cause the necessary publication of the petition 'in newspapers of general and local circulation,' and to instruct 'Municipal Election Registrars in all Regions of the Philippines to assist petitioners and volunteers in establishing signing stations at the time and on the dates designated for the purpose.'[45]

The respondents filed a motion for reconsideration. Justice Justo Torres, Jr., who earlier voted with the majority, inhibited. Justice Regino Hermosisima, Jr., who also voted with the majority, switched sides and joined the minority. Justice Jose Vitug maintained his stand. Thus, the voting on the motion for reconsideration was evenly divided. Six Justices voted to deny it, while six Justices voted to grant it.[46]

Taking their cue from the separate opinion of Justice Jose Vitug, the respondents in that case, solicited signatures for the initiative to amend the Constitution. Claiming they had obtained the required number of signatures for an initiative, the respondents filed a new petition in the Commission on Elections. The Commission on Elections dismissed the petition because of the earlier decision of the Supreme Court in *Santiago*.

When the case was elevated to the Supreme Court, the Supreme Court denied the petition. Seven Justices ruled that there was no need to rule on the plea of the petitioners for a re-examination of the decision in *Santiago*. Justice Jose Vitug agreed with them that there was no need to re-examine the previous decision of the Supreme Court but on the ground that the petition was not the proper vehicle for the purpose. Five Justices opined that

44. *Id.* at 167.

45. *Id.* at 178.

46. *Id.* at 157-58.

there was a need to re-examine the previous decision of the Supreme Court.[47]

It was against this legal background that a new petition to amend the Constitution through initiative was filed in the case of *Lambino v. Commission on Elections*.[48] Claiming that they had gathered the required number of signatures for an initiative to amend the Constitution, the petitioners asked the Commission on Elections to hold a plebiscite on the proposal to shift from a presidential form of government to a parliamentary type of government. The Commission on Elections denied the petition in the light of the ruling of the Supreme Court in *Santiago* and the case was elevated to the Supreme Court. In its ruling, the Justices of the Supreme Court issued a total of twelve opinions.

Then Chief Justice Artemio Panganiban and Justice Reynato Puno reiterated their opinions in *Santiago* and opined that the Initiative and Referendum Act is sufficient. After quoting extensively from the proceedings of the Constitutional Commission, Justice Reynato Puno concluded:

Republic Act No. 6735 clearly expressed the legislative policy for the people to propose amendments to the Constitution by direct action. The fact that the legislature may have omitted certain details in implementing the people's initiative in Republic Act No. 6735, does not justify the conclusion that, *ergo*, the law is insufficient. What were omitted were mere details and not fundamental policies which Congress alone can and has determined.[49]

Justices Adolfo Azcuna and Presbiterio Velasco, Jr. expressed the same view. Justices Renato Corona, Dante Tinga, and Minita Chico-Nazario concurred in the opinion of Justice Reynato Puno.

Justices Angelina Sandoval-Gutierrez and Romeo Callejo expressed the view that the ruling in *Santiago* should be followed on the basis of the principle of *stare decisis*. Justice Antonio Carpio, who wrote the majority decision, felt no need to pass upon the sufficiency of the Initiative and Referendum Act to decide the case.

Unlike in the case of initiative to enact a law, which requires that the petition be signed by at least ten per cent of the registered votes, of which every legislative district must be represented by at least three percent of its registered voters, in the initiative to amend the Constitution, at least twelve percent of the registered voters must sign the petition. The purpose of this is

47. People's Initiative for Reform, Modernization and Action v. Commission on Elections, G.R. No. 129754, September 23, 1997.

48. Lambino v. Commission on Elections, 505 SCRA 160 (2006).

49. *Id.* at 323.

to make the process for amending the Constitution more difficult.[50] Section 2, Article XVII of the Constitution imposed a time limit for amending the Constitution by allowing it only once every five years. The purpose of this limitation is to prevent the abuse of this process, which can result in staging an initiative twice or thrice in a year.[51] While Article XVII of the Constitution expressly authorized Congress and a constitutional convention to revise the Constitution, it withheld this power from the people.

In his separate opinion in *Javellana v. Executive Secretary*,[52] Justice Felix Antonio distinguished revision from amendment as follows:

> There is clearly a distinction between *revision* and *amendment* of an existing constitution. Revision may involve a rewriting of the *whole* constitution. The act of *amending* a constitution, on the other hand, envisages a change of only specific provisions. The intention of an act to amend is not the change of the entire constitution, but only the *improvement of specific* parts of the existing constitution of the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times. The 1973 Constitution is not a mere *amendment* to the 1935 Constitution. It is a completely new fundamental charter embodying new political, social and economic concepts.[53]

The Committee on Amendments and Transitory Provisions took cognizance of this distinction. Commissioner Jose Suarez, the Chairman of the Committee on Amendments and Transitory Provisions, explained why the word 'revision' was included in Sections 1 and 4, Article XVII of the Constitution:

> We mentioned the possible use of only one term and that is, 'amendment'. However, the Committee finally agreed to use the terms — 'amendment' or 'revision' when our attention was called by the Honorable Vice President to the substantial difference in the connotation and significance between the said terms. As a result of our research, we came up with the observations made in the famous — or notorious — *Javellana* doctrine, particularly the decision rendered by Honorable Justice Makasiar, wherein he made the following distinction between 'amendment' and 'revision' of an existing Constitution: 'Revision' may involve a rewriting of the whole Constitution. On the other hand, the act of amending a constitution envisages a change of specific provisions only. The intention of an act to amend is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times.
>
> The 1973 Constitution is not a mere amendment to the 1935 Constitution. It is a completely new fundamental Charter embodying new political, social and economic concepts.
>
> So, the Committee finally came up with the proposal that these two terms should be employed in the formulation of the Article governing amendments or revisions to the new Constitution.[54]

The word "revision" was deliberately omitted in Section 2, Article VII of the Constitution, because it intended to withhold from the people the power to revise the Constitution through initiative. Commissioner Jose Suarez pointed this out:

> The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to revision of the entire Constitution, so we removed it from the operations of Section 1 of the proposed Article on Amendment or Revision.[55]

When he was interpellated on this point, Commissioner Jose Suarez replied as follows:

> Ms. Aquino: In other words, the Committee was attempting to distinguish the coverage of modes (a) and (b) in Section 1 to include the process of revision; whereas, the process of initiation to amend, which is given to the public, would only apply to amendments?
>
> Mr. Suarez: That is right. Those were the terms envisioned in the Committee.[56]

This was corroborated by Commissioner Hilario Davide, Jr., who remarked: "[n]o, it does not, because 'amendments' and 'revision' should be covered by section 1. So insofar as initiative is concerned, it can only relate to 'amendments' not 'revision.'"[57]

The majority opinion penned by Justice Antonio Carpio pointed out that Section 2, Article XVII of the Constitution limits the power of the people to amend the Constitution through initiative to amendments and does not authorize them to propose revisions. The decision reads:

> The framers of the Constitution intended, and wrote that a clear distinction between 'amendment' and 'revision' of the Constitution. The framers intended, and wrote, that only Congress or a constitutional convention may propose revisions to the Constitution. The framers intended, and

50. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 386.
51. *Id.*
52. Javellana v. Executive Secretary, 50 SCRA 30 (1973).
53. *Id.* at 367-68.
54. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 373.
55. *Id.* at 386.
56. *Id.* at 392.
57. *Id.* at 403.

wrote, that a people's initiative may propose only amendments to the Constitution.[58]

Then Chief Justice Artemio Panganiban and Justices Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Romeo Callejo, and Adolfo Azcuna wrote separate opinions explaining that Section 2, Article XVII of the Constitution limited the power of the people to amendments of the Constitution and does not extend to revisions.

Illustrating the difference between amendment and revision of the Constitution, Rev. Joaquin Bernas, S.J. wrote:

> Thus for instance a switch from the presidential system to a parliamentary system would be a revision because of its over-all impact on the entire constitutional structures. So would a switch from a bicameral system to a unicameral system because of its effect on other important provisions of the Constitution.[59]

Likewise, Commissioner Ambrosio Padilla pointed out that the government cannot be changed from a unitary to a federal form through initiative.[60]

However, in his dissenting opinion in *Lambino*, Justice Reynato Puno limited the concept of revision to the rewriting of the whole Constitution and would allow a shift from a presidential to a parliamentary form of government through initiative. He explained:

> Hence, it is arguable that when the framers of the 1987 Constitution used the word 'revision,' they had in mind the 'rewriting of the whole Constitution,' or the 'total overhaul of the Constitution.' Anything less is an 'amendment' or just 'a change of specific provisions only,' the intention being 'not the change of the entire Constitution, but only the improvement of specified parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times.' Under this view, 'substantial' amendments are still 'amendments' and this can be proposed by the people via an initiative.[61]

The majority opinion penned by Justice Antonio Carpio disagreed with this view:

> Where the proposed change applies only to a specific provision of the Constitution without affecting any other section or article, the change may generally be considered an amendment and not a revision. For example, a change reducing the voting age from 18 years to 15 years is an amendment

58. Lambino v. Commission on Elections 505 SCRA 160, 249 (2006).

59. BERNAS, *supra* note 25, at 1294.

60. PADILLA, *supra* note 24, at 686.

61. Lambino v. Commission on Elections 505 SCRA 160, 332-33 (2006).

> and not a revision. Similarly, a change reducing Filipino ownership of mass media companies from 100 percent to sixty (60) percent is an amendment and not a revision. Also, a change requiring a college degree as an additional qualification for elections to the Presidency is an amendment and not a revision.
>
> The changes in these examples do not entail any modification of sections or article of the Constitution other than the specific provision being amended. These changes do not also affect the structure of government or the system of checks-and-balances among or within the three branches.[62]

Along the same line, Justice Romeo Callejo expounded on his disagreement with the view of Justice Reynato Puno:

> Earlier, it was mentioned that Article XVII, by the use of the terms 'amendment' and 'revision,' clearly makes a differentiation not only between the two terms but also between two procedures and their respective fields of application. On this point, the case of *McFadden v. Jordan*[63] is instructive. In that case, a 'purported initiative amendment' (referred to as the proposed measure) to the State Constitution of California, then being proposed to be submitted to the electors for ratification, was sought to be enjoined. The proposed measure, denominated as 'California Bill of Rights,' comprised a single new article with some 208 subsections which would repeal or substantially alter at least 15 of the 25 articles of the California State Constitution and add at least four new topics. Among the likely effects of the proposed measure were to curtail legislative and judicial functions, legalize gaming, completely revise the taxation system and reduce the powers of cities, counties and courts. The proposed measure also included diverse matters as ministers, mines, civic centers, liquor control and naturopaths.
>
> The Supreme Court of California enjoined the submission of the proposed measure to the electors for ratification because it was not an 'amendment' but a 'revision' which could only be proposed by a convention. It held that from an examination of the proposed measure itself, considered in relation to the terms of the California State Constitution, it was clear that the proposed initiative enactment amounted substantially to an attempted revision, rather than amendment, thereof; and that inasmuch as the California State Constitution specifies (Article XVIII § 2 thereof) that it may be revised by means of constitutional convention but does not provide for revision by initiative measure, the submission of the proposed measure to the electorate for ratification must be enjoined.
>
> As piercingly enunciated by the California State Supreme Court in *McFadden, the differentiation required (between amendment and revision) is not merely between two words; more accurately it is between two procedures and between their respective fields of application. Each procedure, if we follow elementary*

62. *Id.* at 258-59.

63. McFadden v. Jordan, 32 CAL. 2d. 330 (1948).

> *principles of statutory construction, must be understood to have a substantial field of application, not to be a mere alternative procedure in the same field. Each of the two words then must be understood to denote, respectively, not only a procedure but also a field of application appropriate to its procedure.*
>
> Provisions regulating the time and mode of effecting organic changes are in the nature of safety-valves — they must not be so adjusted as to discharge their peculiar function with too great facility, lest they become the ordinary escape-pipes of party passion; nor, on the other hand, must they discharge it with such difficulty that the force needed to induce action is sufficient also to explode the machine. Hence, the problem of the Constitution maker is, in this particular, one of the most difficult in our whole system, to reconcile the requisites for progress with the requisites for safety.
>
> Like in *McFadden*, the present petition for initiative on amendments to the Constitution is, despite its denomination, one for its revision. It purports to seek the amendment only of Articles VI and VII of the Constitution as well as to provide transitory provisions.[64]

Citing Rev. Joaquin Bernas, S.J., Justice Angelina Sandoval-Gutierrez explained why revisions of the Constitution cannot be undertaken through initiative:

> In a deliberative body like Congress or a Constitutional Convention, decisions are reached after much purifying debate. And while the deliberations proceed, the public has the opportunity to get involved. It is only after the work of an authorized body has been completed that is represented to the electorate for final judgment. Careful debate is important because the electorate tends to accept what is presented to it even sight unseen.[65]

Undaunted, Justice Reynato Puno reasoned that the people as the repository of sovereignty possess the power to substantially alter the Constitution:

> In our case, the people delegated to Congress the exercise of the sovereign power to amend or revise the Constitution. If Congress, as delegate can exercise this power to amend or revise the Constitution, can it be argued that the sovereign people who delegated the power has no power to substantially amend the Constitution by direct action? If the sovereign people do not have this power to make substantial amendments to the Constitution, what did it delegate to Congress?[66]

In reply, Justice Romeo Callejo wrote:

64. Lambino v. Commission on Elections 505 SCRA 160, 450-51 (2006) (emphasis supplied).

65. *Id.* at 405 (citing Joaquin G. Bernas, S.J., *Sounding Board: Amendment or Revision*, PHIL. DAILY INQ., Sep. 25, 2006.).

66. *Id.* at 340.

> I strongly take exception to the view that the people, in their sovereign capacity, can disregard the Constitution altogether. Such a view contravenes the fundamental constitutional theory that while indeed 'the ultimate sovereignty is in the people, from whom springs all legitimate authority,' nonetheless, 'by the Constitution which they establish, they not only tie up the hands of their official agencies, but their own hands as well; and neither the officers of the state, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental.' The constitution, it should be remembered, 'is the protector of the people, placed on guard by them to save the rights of the people against injury by the people.' This is the essence of constitutionalism.[67]

Justice Angelina Sandoval-Gutierrez laid to rest the claim of the petitioners that they represented the voice of the people, which was the voice of God, by saying:

> *Vox populi vox Dei — the voice of the people is the voice of God.* Caution should be exercised in choosing one's battlecry, lest it does more harm than good to one's cause. In its original context, the complete version of this Latin phrase means exactly the opposite of what it is frequently taken to mean. It originated from a holy man, the monk Alcuin, who advised Charlemagne, '*nec audiendi qui solent dicere vox populi vox dei quum tumultuositas vulgi semper insaniae proxima sit*,' meaning, 'And those people should not be listened to who keep on saying, 'The voice of the people is the voice of God,' since the riotousness of the crowd is always very close to madness.' Perhaps, it is by providence that the true meaning of the Latin phrase is revealed upon petitioners and their allies — that they may reflect upon the sincerity and authenticity of their 'people's initiative.'
>
> History has been a witness to countless iniquities committed in the name of God. Wars were waged, despotism tolerated and oppressions justified — all these transpired as man boasted of God's imprimatur. Today, petitioners and their allies hum the same rallying call, convincing this Court that the people's initiative is the 'voice of the people' and, therefore, the 'voice of God.' After a thorough consideration of the petitions, I have come to realize that man, with his ingenuity and arrogance, has perfected the craft of imitating the voice of God. It is against this kind of genius that the Court must guard itself.[68]

She then concluded: "[y]es, the voice of the people is the voice of God. But under the circumstances in this case, the voice of God is not audible."[69]

B. Substantial Limitation

67. *Id.* at 468.

68. *Id.* at 384-85.

69. *Id.* at 415.

Professor Laurence Tribe of Harvard Law School, a leading authority on constitutional law, explained that the appropriateness of the substance of a proposed constitutional amendment is not subject to judicial review, because it involves a political question. According to him, the constitutional appropriateness of the substance of proposed amendments, however, is undoubtedly a matter entirely committed to judicially unreviewable resolution by the political branches of government.[70]

In the decision of the Supreme Court in *Planas v. Commission on Elections*,[71] Chief Justice Roberto Concepcion acknowledged that the wisdom of proposed amendments embodied in the 1973 Constitution was beyond the pale of judicial review. However, he suggested that the power of the Constitutional Convention to propose constitutional amendments was restricted by *jus cogens*.[72] *Jus cogens* means a mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which derogation is not permitted.[73] This principle is analogous to public order in municipal law.[74]

The principle of *jus cogens* is embodied in Article 53 of the Vienna Convention on Treaties, which provides:

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.[75]

In the case of *Belgium v. Spain*,[76] the International Court of Justice gave some examples of *jus cogens*:

> Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law;[77] others are conferred by international instrument of a universal or quasi-universal character.[78]

70. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 102 (2d ed. 1988).
71. Planas v. Commission on Elections, 49 SCRA 105 (1973).
72. *Id.* at 126.
73. BLACK'S LAW DICTIONARY, 876 (8d ed. 2004).
74. Merlin M. Magallona, *The Concept of Jus Cogens in the Vienna Convention on the Law of Treaties*, 51 PHIL. L.J. 521 (1976).
75. Vienna Convention on the Law of Treaties, 1969, art. 53, 1155 U.N.T.S. 331.
76. Belgium v. Spain, 1970 I.C.J. 3, 31.

In *Simon v. Commission on Human Rights*,[79] the Supreme Court defined human rights as the entitlement that inhere in the individual person because of his humanity. Because they are inherent, human rights are not granted by the State but can only be recognized and protected by it.[80] Thus, the Constitution cannot abolish human rights.

C. Mechanics of Initiative

1. Proponents

The petition for the initiative in *Lambino* was signed by Raul Lambino and Erico Aumentado, who signed in their personal capacities as registered voters and as representatives of the allegedly 6.3 million voters.

The majority opinion of the Supreme Court found the petition fatally defective.

First, amendment of the Constitution by initiative contemplates a petition by the people themselves. Apparently, in this case Raul Lambino and Erico were not acting as representatives of the people but of their political allies.

Second, the majority opinion penned by Justice Antonio Carpio stressed that each one of the supposed proponents of the amendment should sign the petition.

In her separate opinion, Justice Angelina Sandoval-Gutierrez elaborated on this by saying:

> Moreover, nowhere in the petition itself could be found the signatures of the 6.3 million registered voters. Only the signatures of petitioners Lambino and Aumentado were affixed therein 'as representatives' of those 6.3 million people. Certainly, that is not the petition for people's initiative contemplated by the Constitution.
>
> Petitioners Lambino and Aumentado have no authority whatsoever to file the petition 'as representatives' of the alleged 6.3 million registered voters. Such act of representation is constitutionally proscribed. To repeat, Section 2 strictly requires that amendments to the Constitution shall be 'directly proposed by the people through initiative upon a petition of at least twelve

77. Reservations to the Convention on the Preservation and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 23.
78. *Belgium*, 1970 I.C.J. at 31.
79. Simon v. Commission on Human Rights, 229 SCRA 117 (1994).
80. *Id.* at 126.

> per centum of the total number of registered voters.' Obviously, the phrase 'directly proposed by the people' excludes any person acting as representative or agent of the 12% of the total number of registered voters. The Constitution has bestowed upon the people the right to directly propose amendments to the Constitution. Such right cannot be usurped by anyone under the guise of being the people's representative.[81]

2. Text of Proposition

Section 5(c) of the Initiative and Referendum Act provides that the petition shall state the (1) contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be; and (2) the proposition.[82]

The signature sheet which those who gathered signatures attached to the petition in *Lambino* simply reproduced the following proposition:

> Do you approve of the amendment of Articles VI and VII of the 1987 Constitution, changing the forms of government from the present bicameral presidential to a unicameral-parliamentary system of government, in order to achieve greater efficiency, simplicity in government; and providing an Article XVIII as Transitory Provision for the orderly shift from one system to another?

The majority opinion found this deficient, because the full text of the proposed amendments should have been included in the petition. The majority opinion explained:

> The essence of amendments 'directly proposed by the people through initiative upon a petition' is that the entire proposal on its face is a petition by the people. This means two essential elements must be present. First, the people must author and thus sign the entire proposal. No agent or representative can sign on their behalf. Second, as an initiative upon a petition, the proposal must be embodied in a petition.
>
> These essential elements are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition. Thus, an amendment is 'directly proposed by the people through initiative upon a petition' only if the people sign on a petition that contains the full text of the proposed amendments.[83]

Justice Consuelo Ynares-Santiago shared this opinion, for she wrote:

> It may thus be logically assumed that even without Section 5(c) of R.A. 6735, the full text of the proposed changes must necessarily be stated in or attached to the initiative petition. The signatories to the petition must be given an opportunity to fully comprehend the meaning and effect of the proposed changes to enable them to make a free, intelligent and well-informed choice on the matter.[84]

81. Lambino vs. Commission on Elections, 505 SCRA 160, 409-10 (2006).
82. Initiative and Referendum Act, § 5 (c).
83. Lambino v. Commission on Elections 505 SCRA 160, 229 (2006).

3. Number of Propositions

Section 10(a) of the Initiative and Referendum Act reads: "[n]o petition embracing more than one subject shall be submitted to the electoral ..."[85]

The petitioners later on added a proposition to require the interim Parliament to be established to propose amendments or revisions to the Constitution within forty-five (45) days of the ratification of the amendments.

According to the majority, this rendered the petiton fatally defective:

> Section 4(4) is a subject matter totally unrelated to the shift from the Bicameral-Presidential to the Unicameral-Parliamentary system. American jurisprudence on initiatives outlaws this as logrolling — when the initiative petition incorporates an unrelated subject matter in the same petition. This puts the people in a dilemma since they can answer only either yes or no to the entire proposition, forcing them to sign a petition that effectively contains two propositions, one of which they may find unacceptable.
>
> Under American jurisprudence, the effect of logrolling is to nullify the entire proposition and not only the unrelated subject matter.[86]

Justice Consuelo Ynares-Santiago expounded on the reason for this rule:

> As applied to the initiative process, the one subject rule is essentially designed to prevent surprise and fraud on the electorate. It is meant to safeguard the integrity of the initiative process by ensuring that no unrelated riders are concealed within the terms of the proposed amendment. This in turn guarantees that the signatories are fully aware of the nature, scope and purpose of the proposed amendment.[87]

4. Verification

Section 7 of the Initiative and Referendum Act provides that the Election Registrar shall verify the signatures on the basis of the registry list of voters, voters' affidavits and voters' identification cards used in the immediately preceding election.[88]

84. *Id.* at 368-69.
85. Initiative and Referendum Act, § 10 (a).
86. Lambino v. Commission on Elections 505 SCRA 160, 243 (2006).
87. *Id.* at 370.
88. Initiative and Referendum Act, § 7.

Justice Romeo Callejo considered the verifications of numerous signatures in the petition in *Lambino* as ineffective, because they were not undertaken by the Election Registrars. He pointed out that "[i]n patent violation of the law, several certifications submitted by petitioners showed that the verification was made, not by the election registrars, but by barangay officials."[89]

The dissenting opinion of Justice Reynato Puno proposed that the petition be remanded to the Commission on Elections for determination whether or not the petition complied with Republic Act No. 6735. The dissenting opinion reasoned:

> In sum, the issue of whether the petitioners have complied with the constitutional requirement that the petition for initiative be signed by at least twelve percent of the total number of registered voters, of which every legislative district must be represented by at least three percent of the registered voters therein, involves contentious facts ... I respectfully submit that this issue should be properly litigated before the COMELEC where both parties will be given full opportunity to prove their allegations.[90]

However, the majority considered the petition irremediably defective.[91] Justice Romero Callejo summed it all up by saying that this being the case, the Court must forthwith order the dismissal of the petition for initiative for being, on its face, insufficient in form and substance.[92]

D. Plebiscite

1. Requirement

Section 4, Article XVII of the Constitution provides:

> Any amendment to, or revision of this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.
>
> Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days or later than ninety days after the certification of the Commission on Elections of the sufficiency of the petition.

2. Period

89. Lambino v. Commission on Elections 505 SCRA 160, 460 (2006).

90. *Id.* at 348-51.

91. *Id.*

92. *Id.* at 463.

The plebiscite is required to be held not earlier than sixty days to enable the electorate to study and analyze the proposals submitted for the amendment or revision of the Constitution.[93]

The Supreme Court has held that the fact that a special election was held more than thirty (30) days after the cessation of the cause of the failure of the election does not affect its validity although Section 6 of the Omnibus Election Code requires that it be held within thirty (30) days.[94] There is no reason why this ruling should not apply to plebiscites for the ratification of amendments or revisions of the Constitution since they are of far greater importance than the elections of public officers.

3. Piecemeal Plebiscites

In the case of *Tolentino*, the Supreme Court prohibited the Commission on Elections from holding a plebiscite on the singular proposal to reduce the age qualification for the exercise of suffrage from 21 years to 18 years while the rest of the Constitution was still being drafted. The Supreme Court explained:

> The same provision also as definitely provides that '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,' thus leaving no room for doubt as to how many 'elections' or plebiscites may be held to ratify any amendment or amendments proposed by the same constituent assembly of Congress or convention, and the provision unequivocably says 'an election' which means only one.[95]

The Supreme Court added:

> We are certain no one can deny that in order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole. In the context of the present state of things, where the Convention has hardly started considering the merits of hundreds, if not thousands, of proposals to amend the existing Constitution, to present to the people any single proposal or a few of them cannot comply with this requirement. We are of the opinion that the present Constitution does not contemplate in Section 1 of Article XV a plebiscite or 'election' wherein

93. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 372.

94. *See* Pangandaman v. Commission on Elections, 319 SCRA 283, 300 (1999); Sambarani v. Commission on Elections, 438 SCRA 319, 328 (2004).

95. Tolentino v. Commission on Elections, 41 SCRA 702, 727 (1971).

> the people are in the dark as to frame of reference they can base their judgment on.[96]

4. Synchronization with Election of Public Officers.

In *Gonzales*, a divided Supreme Court rejected the argument that the plebiscite on the proposed amendments to the 1935 Constitution should be held separately from the general election of public officers. The petitioners in that case argued that the attention of the people would be distracted because of the general election of public officers instead of being focused on the proposed amendments. In dismissing the petitions, the prevailing opinion drew the line between the wisdom and the constitutionality of the proposal to require a separate plebiscite:

> It would be better, from the viewpoint of a thorough discussion of the proposed amendments, that the same be submitted to the people's approval independently of the election of public officials. And there is no denying the fact that an adequate appraisal of the merits and demerits proposed amendments is likely to be overshadowed by the great attention usually commanded by the choice of personalities involved in general elections, particularly when provincial and municipal officials are to be chosen. But, then, these considerations are addressed to the wisdom of holding a plebiscite simultaneously with the election of public officers.[97]

5. Public Information

In 1981 amendments were proposed to the 1973 Constitution. On 12 March 1981, President Ferdinand Marcos addressed the nation and campaigned for the ratification of the proposed amendments. For two hours 26 television stations and 248 radio stations throughout the country broadcasted his speech. The United Democratic Opposition filed a petition to be given equal time to campaign for the rejection of the proposed amendments.

In deciding the case, the Supreme Court first expounded on the transcendental importance of the plebiscite and the necessity of giving the voters adequate opportunity to understand the proposed amendments.

> Be it borne in mind that it has been one of the most steadfast rulings of this Court in connection with such plebiscites that it is indispensable that they be properly characterized to be fair submission — by which is meant that the voters must of necessity have had adequate opportunity, in the light of conventional wisdom, to cast their votes with sufficient understanding of what they are voting on. We are of the firm conviction that the charter's reference to honest elections connotes fair submission in a plebiscite. It cannot be otherwise, for then the importance of suffrage for the election of

96. *Id.*

97. Gonzales v. Commission on Elections, 21 SCRA 774, 796 (1967).

> officials would be more significantly valued than voting on the ratification of the constitution or any amendment thereof. We cannot yield to such an unorthodox constitutional concept that relegates the fundamental law of the land which is the source of all powers of the government to a level less valued than the men who would run the same. When a voter either gives or denies his assent to a change of the existing charter of his rights and liberties and the existing governmental form as well as the powers of those who are to govern him, he virtually contributes his little grain of sand to the building of the nation and renders his share in shaping the future of its people, including himself, his family and those to come after them. Indeed, nothing can be of more transcendental importance than to vote in a constitutional plebiscite.[98]

Then, in a classic display of a judicial oxymoron, the Supreme Court held that the United Democratic Opposition was not entitled to be given equal time, because it was not in the same position as President Ferdinand Marcos.

> Therefore, when the head of state is afforded the opportunity or when he feels it incumbent upon him to communicate and dialogue with the people on any matter affecting the plan of government or any other matter of public interest, no office or entity of the government is obliged to give the opposition the same facilities by which its contrary views may be ventilated. If the opposition leaders feel any sense of responsibility in the premises to counter the administration, it is up to them — and they are free — to avail of their own resources to accomplish their purpose.[99]

This doctrine should be considered as no longer operative. Section 4, Article IX-C of the Constitution granted the Commission on Elections the power to regulate the mass media during the election period to ensure equal opportunity and the right to reply by providing that "such supervision or regulation shall aim to ensure equal opportunity, time and space, and the right to reply, including reasonable rates therefore, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections."[100] This provision was precisely incorporated in the Constitution to overturn the ruling in the above-mentioned case.[101]

Although this provision refers to the election of candidates, it should be applied to plebiscites for proposed amendments to the Constitution, which is of transcendental importance when compared to the election of public officers.

98. United Democratic Opposition v. Commission on Elections, 104 SCRA 17, 37 (1981).

99. *Id.* at 39.

100. PHIL. CONST. art. IX-C § 4.

101. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 632, 662-63.

IV. Proposal for Adoption of a Parliamentary Form of Government

Like snake oil salesmen, the proponents of the adoption of a parliamentary form of government boast that it is the panacea to the social, political and economic problems of the Philippines. It is not.

The debate as to which is the best form of government has raged for centuries and will continue to do so endlessly. As Alexander Pope wrote: "[f]or form of government let fools contest, [w]hat'er is best administered is best."[102]

No form of government is perfect, because every government is run by human beings and not by angels. Which form of government is most suitable to the Philippines cannot be determined on the basis of abstract principles but on the basis of practical political practices.

More countries have adopted the parliamentary form of government rather than the presidential form of government. This is not because they have found that the parliamentary form of government is better than the presidential form of government. This was brought about by an accident of history. At the height of its power, the British Empire, the largest empire in history, ruled one-fourth of the territory of the world and a population of 425 million. It held sway over Canada, Australia, New Zealand, Asia, Africa and the Caribbean.[103] Naturally, Great Britain influenced the form of governments of its former colonies.

It is also argued that the countries which have embraced the parliamentary form of government have prospered. At best this is an oversimplification. At worst this is an irrationality. The fallacy in the argument is that it is proceeding from the consequent to the antecedent. One is reminded of the statistician who, after counting the houses with newly born babies and with nests of storks in their chimneys, concluded it is the stork that brings babies. South Korea and Taiwan, who have adopted the presidential form of government, have prospered. On the other hand, some of the countries in Africa who have chosen the parliamentary form of government are among the most impoverished in the world. The Philippines has sunk in a morass because of the type of public officials who get elected into office.

A. Unsuitability of the Parliamentary Form of Government

102. Alexander Pope, Essay on Men (1734).

103. Lawrence James, The Rise and Fall of the British Empire 353 (1996).

In choosing a form of government, one must consider the culture, tradition and experience of the people. One cannot just transplant an alien form of government if the soil is not prepared for it.

The source of the stability of the English system is its strong party system. Although there are times when there were three political parties, usually one party has managed to secure a working majority. The English voters choose the members of Parliament on the basis of their programs rather than the personality of their candidates. The case of Winston Churchill, who switched parties several times, is highly exceptional.

Party discipline is strict. A member of the English Parliament owes his election to his party. If he does not follow the party line, he will be expelled. He cannot expect to be re-elected on the basis of his personal popularity.

France originally tried to copy the English Parliament. Its experiment with the parliamentary form of government resulted in disaster, because France did not have the political institutions and attitudes that made the English system work. The parliamentary system presupposes a strong two-party system. France had a proliferation of political parties. As a result, no single party could command a working majority. To form a cabinet, a Prime Minister had to form a coalition with several parties. Conflicts with the other members of the coalition resulted in the downfall of cabinet after cabinet. Dissolution of the legislature did not result in stability either. The fragmentation of numerous political parties prevented any party from getting a clear-cut majority. During the Third Republic from 1870 to 1940, the political game of musical chairs resulted in the formation of 99 cabinets with an average life span of nine months. During the Fourth Republic from 1947 to 1958, France had a total of 25 cabinets with an average life span of seven months. It was only when Charles de Gaulle stepped in and strengthened the executive at the expense of the legislature that France started enjoying some measure of stability.

The same problem haunted Germany because of the proliferation of political parties before the outbreak of the Second World War. From 1919 to 1933, 21 different cabinets took turns over the reins of the government.

Today Germany enjoys political stability. The nightmarish memory of the Third Reich has resulted in a more homogeneous society. The parliamentary government requires a constructive vote of loss of confidence to oust the incumbent Chancellor. This means that the expression of loss of confidence is not enough to remove the Chancellor. He remains in office until the legislature elects his successor.

Italy is beset by the same problem of political instability. The collapse of cabinet after cabinet is due to the multiplicity of political parties.

Thus, a multi-party system results in instability in a parliamentary form of government, because to muster a working majority, a Prime Minister has to form a coalition with several parties. One of them can bolt the alliance if it feels disgruntled and thus bring down the working coalition.

Filipinos are personalistic in their relationships. This cultural value plays a prominent role in politics. The lower the level of government election is involved, the more a typical Filipino voter casts his votes on the basis of personal ties.

Dr. Carl H. Lande has pointed out that political alignments in the Philippines are based on personal ties rather than on sharing of similar views on questions of public policy.[104] He observes: "A typical Filipino politician has a personal following and a personal system of alliances with numerous other politicians."[105] He adds that factional grouping and rivalries are based upon personal and family rivalries in each local community.[106]

Writing about the political parties in the Philippines, Jean Grossholtz observed that "a closer-look reveals that the two are not parties but coalitions or factions put together largely for electoral purposes and characterized by constantly shifting politics in the Philippines."[107] Further elaborating, "citizens who do identify themselves as party members are committed to individuals and will follow them from party to party."[108]

Political turncoatism is prevalent, because a politician knows that even if he switches parties, he will not lose his following. His followers will join him in the new party. Again, Grossholtz observes that "voters judge the men they elect to office on the norms of social life, how well they deal with local problems, how careful they are of others' *hiya*, how approachable they are."[109]

Thus, the source of the malaise in Philippine politics is not structural but cultural.

Since Philippine politics focuses on personalities rather than programs of government, political parties do not take a stand on controversial issues when they formulate their platforms. Their platforms are instead couched in platitudes with which no one will disagree, such as enforcement of law and

104. Carl H. Lande, Leader, Faction and Parties: The Structure of Philippine Politics 106-07 (1965).

105. *Id.* at 7.

106. *Id.* at 16.

107. JEAN GROSSHOLTZ, POLITICS IN THE PHILIPPINES 136 (1964).

108. *Id.* at146.

109. *Id.* at 161-62.

order, eradication of graft and corruption, and creation of more job opportunities.

In a parliamentary form of government where the lawmakers are elected because of the platform of the parties as in England, the political party in power is responsible for the running of the government. If the people are dissatisfied with its performance, they will then vote into power a political party with a different program of government.

The people do not vote for legislators because they have sponsored wise laws. Philippine politics revolves around personalities rather than platforms. The moment a political party succeeds in replacing another political party from power, the members of the old political party usually switch to the new political party. The reason for this is that political leaders need patronage to survive and thrive. A political leader who does not belong to the party in power cannot expect the award of public works contracts in his constituency and the appointment of his proteges to government positions. Thus, the political leaders who were ousted from power are soon back under the umbrella of the new political party in power.

In such a situation, pinpointing of responsibility, which is the heart of the parliamentary form of government, is ineffectual.

B. Need for Checks and Balances

Abraham Lincoln aptly summarized the dilemma of every government: "[m]ust a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?"[110]

Power is a double-bladed sword. It can be wielded for good or evil. Not everyone who wields power is an angel. There must be a shield against abuse of power.

History teaches that the concentration of powers leads to tyranny. Explaining the reason for the doctrine of separation of powers, James Madison wrote: "[t]he accumulation of all powers, legislative, executive, and judiciary, in the hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[111] The practical necessity of establishing a government for maintaining an orderly society is at the same time a tribute to human genius and a recognition of human weakness. Again, James Madison notes:

110. ABRAHAM LINCOLN, IV COMPLETE WORKS OF ABRAHAM LINCOLN 304 (John Nicolay & John Hay eds., Francis D. Tandy Co. 1894)

111. James Madison, Federalist Paper No. 47 (Jan. 19, 1788).

> But what is government itself but the greatest reflection on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficult lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.[112]

The inventors of the system of checks and balances decided to tilt the balance in favor of liberty. They considered liberty so important that they were willing to assume the risk that it may at times lead to deadlocks and inefficiency. In a dissenting opinion, Justice Louis Brandeis explained:

> Checks and balances were established in order that this should be 'a government of laws and not of men' ... The doctrine of the separation of powers was adopted by the Convention of 1787 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 the governmental powers among three departments, to save the people from autocracy.[113]

The consolidation of the legislative and the executive powers under the 1973 Constitution led the country into a nightmarish experience.

C. Necessity for a Bicameral Legislature

The proponents of the shift to a parliamentary form of government advance the argument that the establishment of a unicameral legislature will avoid the deadlocks and gridlocks, which are inherent in a bicameral legislature. The advantages and the disadvantages of a bicameral and a unicameral legislature cannot be evaluated on the basis of abstract theories. They must be assessed on the basis of political realities.

The question of whether the legislature should be unicameral or bicameral was thoroughly discussed in the Constitutional Commission.[114]

The following are the advantages of a bicameral legislature:

1. Since the members of the House of Representatives are elected by districts, their concern is the welfare of their constituents. Another chamber whose members are elected on a nation-wide basis is needed to represent national interests.[115]

112. James Madison, Federalist Paper No. 51 (Feb. 8, 1788).

113. Myers v. United States, 272 U.S. 52, 292-293 (1927).

114. II RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 43-69.

115. *Id.* at 47-49.

2. The members of the House of Representatives are more susceptible to pressure by the Executive Department and by influential political leaders from their districts. They need patronage to retain the good-will of their constituents, and they succumb to lobbying efforts by influential political leaders, who control a sizable number of votes in their districts. The members of the House of Representatives are elected usually not on the basis of the number of important bills they have sponsored but on the basis of the assistance they have extended to their constituents. Since the members of the Senate are elected at large, they can resist such pressures.

   Former Senators Francisco Rodrigo and Ambrosio Padilla related that there were numerous instances in which the House of Representatives passed an ill-advised piece of legislation because its members had to accommodate an influential political leader. The congressmen themselves would ask the Senate to kill the bill.[116]

3. Laws will be more thoroughly studied if the legislature has two chambers. This serves as a check on hasty legislation.[117]

Usually, only a few congressmen are left in the House of Representatives after the roll call. The House of Representatives would then pass laws on second and third readings even if there is no quorum. It is made to appear that the absent members voted in favor of the bills. Thus, in many instances laws are passed without the knowledge of many members of the House of Representatives.[118]

Lawmakers who belong to the same house are not inclined to oppose bills sponsored by their colleagues. A legislator who blocks the bill filed by another legislator is inviting retaliation. The other legislator will thwart the enactment of his bills. Whenever a new congressman would seek his advice on how to succeed in the United States Congress, Speaker Sam Rayburn would reply, "To get along, go along."[119]

In a democracy, a thorough discussion of public issue for formulating national policies is of paramount importance. The different viewpoints should be heard. In a unicameral legislature by sheer tyranny of numbers, the majority party can rush unsound and oppressive laws through the legislative mill since as leader of his party, the Prime Minister controls the legislature and can reduce it to a veritable rubber stamps.

116. *Id.* at 48-49, 53.

117. *Id.* at 47, 53, 55.

118. *Id.* at 54.

119. ROBERT CARO, I THE YEARS OF LYNDON JOHNSON (THE PATH TO POWER) 320 (1982).

What is needed is quality legislation rather than hasty legislation. The contention that a bicameral legislature is paralyzed by disagreements and discord is a myth.

From the time the Interim Batasang Pambansa was convened in 1978 until the time the regular Batasang Pambansa was abolished in 1986, they passed a total of 889 laws over a period of seven and a half years.[120] On the other hand, from the time the Congress established by the 1987 Constitution was convened on 27 July 1987 until 11 March 2007, it enacted a total of 2,753 laws. While the unicameral Interim Batasang Pambansa and the regular Batasang Pambansa were passing an average of 119 laws per year, the present bicameral Congress has approved an average of 138 laws per year. Thus, the bicameral Congress is outperforming the unicameral Interim Batasang Pambansa and regular Batasang Pambansa.

D. Destruction of Civil Service System

The civil service has established a career system.[121] Thus, those in the civil service are prohibited from engaging in partisan political activities.[122]

In a parliamentary form of government, the members of the cabinet have to be elected as members of the legislature. Thus, although the 1971 Constitution, which established a parliamentary form of government, prohibited those in the civil service from electioneering, they were under pressure to work for the election of the heads of their ministries. When the head of a ministry gets elected, like Santa Claus who is coming to town, he will remember who has been naughty or nice.

E. Perpetuation in Power of the Majority Party

A parliamentary form of government requires a strong party system. However, in Philippine politics, those who belong to the opposition usually switch to the majority party to share in the patronage. People vote for candidates not because of their platforms but because of patronage. If the Philippines avers to adopt a parliamentary form of government, the majority party will perpetuate itself in power. Without resources and patronage, an opposition power will not be able to topple the majority power. This has been the pattern of politics in developing countries. Thus, Lee Kuan Yew was Prime Minister of Singapore for thirty years. Ahmed Mahathir was Prime Minister of Malaysia for twenty-two years. They both ceased to be Prime Ministers, because they decided to voluntarily step down.

120. HOUSE OF REPRESENTATIVES, 2 COMPENDIUM OF PHILIPPINE LAWS 881-997 (1989).

121. PHIL. CONST. art. IX-A § 3.

122. PHIL. CONST. art. IX-A § 4.

Thus, in a parliamentary form of government, the opposition will be crushed.

F. Longevity of Unpopular Prime Minister

In a multi-party legislature, the tenure of the Prime Minister is precarious. On the other hand, in a two-party legislature, a Prime Minister can remain in power for decades. This has been the pattern of parliamentary governments in countries in which one political party is dominant. In developing countries which have adopted the parliamentary form of government, usually one political party has stayed in control of the government for decades.

The objective of a political party is to gain power. As Henry Kissinger remarked, "Power is the greatest aphrodisiac." In a political environment in which lawmakers are not elected on the basis of the platform of political parties but on the basis of the personalities of the candidates, an opposition party finds it very difficult to wrest control of the government because of the resources and advantages of the political party in power.

Although the Prime Minister of England can theoretically be removed any time, the English Prime Minister has enjoyed more stability than the President of the United States. The last time an English Prime Minister whose party controlled the majority of the seats in Parliament was ousted by a no-confidence vote by the majority was in 1895.

Since then Prime Ministers have resigned not because of an actual no-confidence vote but because of a split within the ranks of their own party. When Neville Chamberlain resigned as Prime Minister in 1940, the motion to express loss of confidence in him was defeated. However, sixty (60) members of his party, the Conservative Party, abstained. At the same time, the opposition, the Labor Party, stated that it would no longer support him. Believing that all political parties should close ranks during the Second World War, Neville Chamberlain resigned and paved the way for his replacement by Winston Churchill. Although the overwhelming majority of the English voters want Prime Minister Tony Blair to resign because scandals have been hounding his administration and the participation of England in the Iraq War has met public condemnation, his party has not ousted him.

Philippine politics revolves around personalities of leaders rather than programs of government. In such a situation, the possibility that a majority party will oust a Prime Minister in a parliamentary form of government in the Philippines is very remote. The Prime Minister is the leader of his political party. He controls its members. The attempts to impeach three Presidents ended in failure despite public outrage, because their political parties were not willing to vote against them. In the light of this experience, can a majority party be expected to remove its leader as Prime Minister?

Even if a majority party tries to oust an incumbent Prime Minister, he can easily block such a move by threatening to dissolve the legislature and calling for new elections on the theory that the people will support him in the election by booting out the members of the Parliament who wanted him ousted.

V. Advisability of Constitutional Amendment by Congress

Those who claim that the Constitution must be revised refuse to entrust this task to Congress on the theory that since the members of Congress are politicians, the purity of their hearts is suspect.

It will be recalled that on 16 March 1967, Congress approved Resolution No. 2, which called a Constitutional Convention. To implement Resolution No. 2, Congress passed Republic Act No. 6132, also known as the 1971 Constitutional Convention Act,[123] which laid down the mechanics for the election of the delegates to the Constitutional Convention. This law valiantly tried to insulate the Constitutional Convention from the influence of politics.

Public officials who ran as delegate for the Constitutional Convention were deemed resigned.[124] Delegates were barred from holding any office while the Constitutional Convention was still revising the Constitution.[125] Candidates were required to make a public disclosure of their income tax returns for the last two years.[126] Political parties and all organizations were banned from nominating or supporting any candidate.[127]

The golden hopes and rosy dreams which accompanied the launching of the Constitutional Convention were soon dashed. Delegate Eduardo Quintero disclosed that envelopes containing money were being distributed among the delegates. The public taunted the delegates as 'coin-coin delegates,' 'daily-gets,' 'de-lagay-do,' and 'pay-triots.' Eventually, the

123. An Act Implementing Resolution of Both Houses Numbered Two as amended by Resolution of Both Houses Numbered Four of the Congress of the Philippines Calling for a Constitutional Convention, Providing for Proportional Representation Therein and Other Details Relating to the Election of Delegates to and the Holding of the Constitutional Convention, Repealing for the Purpose Republic Act Four Thousand Nine Hundred Fourteen, and for Other Purposes [The 1971 Constitutional Convention Act], Republic Act No. 6132 (1970).

124. *Id.* § 4.

125. *Id.* § 5.

126. *Id.* § 6 (a).

127. *Id.* § 8 (a).

Constitutional Convention adopted a Constitution, which entrenched the dictatorship of former President Ferdinand Marcos.

In his oft-quoted aphorism, George Santayama wrote, "Those who cannot remember the past are condemned to repeat it."

It is the height of naiveté to expect that if a Constitutional Convention were to be elected, its delegates will all have pure hearts — that they will all perform their task like cardinals assembled in a conclave and inspired by the Holy Spirit.

The families and the economic interests which have dominated politics for generations will not let the opportunity to influence the outcome of the election of delegates to a Constitutional Convention escape their stranglehold. Neither can they be expected to allow the Constitutional Convention to draft a new Constitution shielded from their pressure. They can be expected to protect their vested interests and to advance their hidden agenda.

The pattern of politics has shown the pervasive influence of the mass media upon voters. Movie characters and media practitioners, some of whom are of questionable competence, have succeeded in being elected to public office because of their media exposure.

Can it be expected that an elected Constitutional Convention will produce delegates who will be more competent in the craft of revising the Constitution than such members of the Constitutional Commission as Chief Justice Roberto Concepcion, Justice Cecilia Munoz Palma, Justice Florenz Regalado, Justice Adolfo Azcuna, Justice Jose Colayco, Senator Ambrosio Padilla, Senator Francisco Rodrigo, Senator Lorenzo Sumulong, Speaker Jose Laurel, Jr., and Rev. Joaquin Bernas, S.J.?

The advantages of leaving the amendment of the Constitution to Congress are manifold. It will be more difficult to have an unsound proposal approved. It must be approved by two houses. The proposal must be approved by at least three-fourths of the members of the Senate and the House of Representatives. When the proposed amendments are submitted to the people for ratification, the people can selectively ratify what is wise and discriminatively reject what is imprudent.

On the other hand, if a Constitutional Convention is the one who will revise the Constitution, any proposed revision will need the approval of only one chamber and can pass upon the favorable vote of the majority of a quorum. When the draft of the revised Constitution is submitted for the ratification, in casting their votes the people cannot be selective. They will have to vote on the draft as a whole. They will have to take the wise with the unsound.

VI. CONCLUSION

In *Tolentino*, the Supreme Court stressed the need for care in amending the Constitution:

> Constitution making is the most valued power, second to none, of the people in a constitutional democracy such as the one our founding fathers have chosen for this nation, and which we of the succeeding generations generally cherish. And because the Constitution affects the lives, fortunes, future and every other conceivable aspect of the lives of all the people within the country and those subject to its sovereignty, every degree of care is taken in preparing and drafting it. A constitution worthy of the people for which it is intended must not be prepared in haste without adequate deliberation and study. It is obvious that correspondingly, any amendment of the constitution is of no less importance than the whole Constitution itself, and perforce must be conceived and prepared with as much care and deliberation.[128]

It is therefore of paramount importance to see to it that any attempt to amend or revise the Constitution adheres strictly to the requirements of the Constitution. The procedure for amending or revising the Constitution has been made rigorous and difficult precisely to ensure its stability.[129]

In his concurring opinion in the case of *David vs. Macapagal-Arroyo*, Chief Justice Artemio Panganiban warned that the administration may be trying to test the outer limits of presidential power. He recalled that the Philippines underwent the wrenching experience of being subjected to a dictatorship because the Supreme Court failed to display moral courage.[130]

The Revised Constitution prepared by the Consultative Commission appointed by President Gloria Macapagal-Arroyo is paving the way for the restoration of authoritarian rule. Freedom of speech, of expression and of the press will be protected only if it is exercised responsibly.[131] The expanded scope of judicial power was repealed.[132] The requirement in the 1935 Constitution that a two-thirds majority of the Supreme Court is needed to declare a law unconstitutional has been restored.[133]

Imminent danger of rebellion or invasion was restored as a ground for the suspension of the privilege of the writ of habeas corpus and the

128. Tolentino v. Commission on Elections, 41 SCRA 702, 725 (1971).

129. I RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 372, 386.

130. David v. Macapagal-Arroyo, 489 SCRA 160, 277 (2006).

131. Proposed Revision of the 1987 Constitution, art. V § 4, *available at* http://www.pcij.org/blog/wp-docs/ConCom-Proposed-Revisions-to-1987-Constitution.pdf (last accessed Sep. 21, 2007).

132. *Id.* art. X § 1.

133. *Id.* art. X § 4 (2).

proclamation of martial law. The power of the Supreme Court to review the sufficiency of the factual basis of the suspension of the writ of habeas corpus and the proclamation of martial law was abolished. The safeguards imposed in Section 18, Article VIII of the Constitution to prevent a repetition of the abuses when President Ferdinand Marcos proclaimed martial law were scrapped. The abolition of the power of the President to legislate during a state of martial law, the prohibition against the trial of civilians by military courts, the limitation of the suspension of the privilege of the writ of habeas corpus to those involved in rebellion or invasion, and the requirement that those detained during the suspension of the privilege of the writ of habeas corpus must be charged in court within three days have been repealed.[134]

Instead, there will be an interim Parliament composed of the incumbent Senators and Congressmen, at least one-third of the Cabinet Members with portfolio, and thirty persons to be appointed by President Gloria Macapagal-Arroyo.[135]

The interim Prime Minister and the Cabinet will be under the direction and supervision of President Gloria Macapagal-Arroyo.[136] President Gloria Macapagal-Arroyo will be the President, Head of State, and Head of Government.[137]

It therefore behooves every Filipino to resist this attempt to restore authorianism with every legal weapon.

The nightmarish experience of the nation during the dark days of the 1973 Constitution brings to mind the warning of Justice Calixto Zaldivar in his separate opinion in the case of *Javellana*, when he quoted a dissenting opinion of Justice George Sutherland: "[t]he saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."[138]

134. *Id.* art. IX § 8.

135. *Id.* art. XX § 9.

136. *Id.* art. XX § 12.

137. Proposed Revision of the 1987 Constitution, art. XX § 13.

138. Javellana v. Commission on Elections, 50 SCRA 30, 309 (1973) (citing The Associated Press vs. National Labor Relations Board, 301 U.S. 103, 141 (1937)).