PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE PHILIPPINES †

*Ramon C. Aquino**

THERE are persons who see nothing wrong with the Constitution and who evince satisfaction with the operation of the government blueprinted in that great charter. They are the apostles of the *status quo*, the worshippers of what Branch Cabell calls the God of Things-As-They-Are. They include those who subscribe to the creed that to the dominant party belong the spoils of victory; that men are not angels; that it is absurd to be in power without being able to make the most of it and without aggrandizing one's personal fortune; and that any proposed change in the existing governmental scheme, which might affect their vested interests or diminish their influence, should be vigorously and tenaciously resisted.

On the other hand, a respectable sector of public opinion, not necessarily the radical element, strongly adheres to the conviction that certain modifications in the governmental structure outlined in the Constitution are urgently called for in order that its noble objectives may be fully realized. The necessity for such changes have been glaringly revealed by the lessons of experience.

If the life of the law, as Holmes philosophized, is not logic but rather experience; if government, as Justice William Johnson of the Federal Supreme Court said, is simply the "science of experiment"; if the validity of political theory is to be ultimately tested in the crucible of actualities, and if the Constitution is a living instrument which must be adjusted to changing conditions and circumstances, then the present generation is blind indeed if it does not perceive that our experience sufficiently justifies the introduction of reforms in our organic law. Such men as Justice Cesar Bengzon, Senator Claro M. Recto, the President of the Convention which framed the Constitution, Senator Laurel, an eminent delegate to the Convention, Emilio Abello, former Executive Secretary, and the leaders of the Philippine Lawyers Association, are convinced that amendments to the fundamental charter are necessary in the light of our experience and of the actual operation of the government under the Constitution for the period of more than sixteen years.

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* LL.B., University of the Philippines.

The framers of the Constitution would be the first to admit that it is not a perfect instrument. It was amended before the war to allow President Quezon's re-election and for the purpose of creating the Senate, the Commission on Elections and the electoral tribunals; and after the war it was amended to enable American citizens and corporations to enjoy parity rights in the exploitation of our natural resources and the operation of public utilities. The American Constitution, described by Gladstone as the most wonderful thing ever devised by the brain and purpose of man on a single occasion, has been amended several times. Constitution-making and the art of government are empirical, pragmatic matters.

It is respectfully submitted that the following proposed amendments to the Constitution deserve serious and mature reflection:

1. Restoration of the original provision providing for a single 6-year term for the President without re-election.

2. Election of Senators by districts and increase in the number of Senators.

3. Amendment making the Vice-President the Presiding Officer of the Senate.

4. Creation of an independent electoral tribunal to pass upon protests against the election of the President and members of Congress.

5. Reorganization of the judicial department by vesting in the Supreme Court administrative supervision over Courts of First Instance and inferior courts and creating civil and criminal divisions in the Supreme Court.

6. Revision of the concept of double jeopardy by permitting an appeal from a judgment of acquittal.

7. Amendment expressly allowing legislative investigation of the armed forces and the General Auditing Office.

8. Amendments regarding the pardoning and emergency powers of the President.

9. Amendments to clarify the provisions of the Constitution regarding citizenship, habeas corpus, the power of the President over local officials, and the *Krivenko* ruling.

I. Restoration of the Original Provision for a Single 6-Year Term for the President Without Re-election

The Constitution originally provided in section 2 of Article VII that "the President shall hold his office during a term of six years" and in section a of the same article it was provided that "no person elected President may be re-elected for the following term." The reason for the prohibition against re-election is clearly explained by Professor Aruego in this wise:

The delegates believed that the prohibition against reelection would project the President from the level of ordinary politics, making of him the statesman that he should be as the Chief Magistrate of the Nation. With the lure of a reelection removed, it was generally expected that from the time of his inauguration he would proceed to his task with the determination to make good during his term, executing the functions assigned to him in the Constitution in a manner dictated only by his sense of responsibility and by the general welfare of the people, regardless of its vote-drawing power.[1]

In other words, by giving the President a term of six years without re-election, the possibility that he would become a long-time dictator is obviated; and if he were really a good man, he would be induced to devote all his energies for the promotion of the national welfare during his term of office, and his actuations would not be motivated by considerations of partisan expediency. He would strive to be a real statesman, instead of spending his time in politicking, and he would avoid degenerating into an ordinary politician intent merely on perpetuating himself in office by catering to the wishes of his political supporters. The Brazilian constitution prohibits presidential re-election apparently for the same reasons.

President Quezon himself was reportedly in favor of the prohibition against re-election because he knew that the temperament of our people, who had experienced subjection for four centuries and in whose atavistic mentality the vestiges of servility still lingered, was not a sure safeguard against dictatorship or against the overweening ambition of unscrupulous politicians and that, on the contrary, the masses could easily be duped by a strong-willed and scheming political leader.

But a few years after the inauguration of President Quezon, as first President of the Commonwealth, when it became apparent that he would outlive his six-year term, a move was started, probably at his own instigation or inspiration (for, like President Roosevelt, he was an astute and masterful politician and this is perhaps his most notable trait), to remove the prohibition against re-election. Strangely enough, no one among the framers of the Constitution had the courage to raise his voice in protest against the removal of that prohibition, which the members of the Convention, with their wisdom and foresight, had placed in the Constitution. President Quezon had so dominated the political scene that his wish was law. There was no person with sufficient caliber and influence to challenge his leadership. And so the prohibition was removed, and, in lieu thereof, we have the present provisions in sections 2 and 5 of Article VII, giving the Presiednt a term of four (4) years and allowing one re-election.

Our experience in 1949 conclusively shows that presidential re-election is a flagrant evil that must be rooted out. The prevalent impression is that, because President Quirino in 1949 wanted to be re-elected, colossal

[1] 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 412 (1936).

and scandalous frauds were committed to insure his re-election, and the armed forces improperly participated in the election so that their commander-in-chief would remain in office. When he sought another re-election in 1953, the opposition party, having learned and not forgotten its lesson in 1949, had to pit against Mr. Quirino a man who was strong with the army (having been its former boss) and who in 1951 was largely responsible for the conduct of clean and honest elections, also with the army's help.

It is a sad commentary that the government under our Constitution had reached such a point in 1953 that the Nacionalista Party found it expedient to sponsor as candidate against Mr. Quirino the only man who could prevent the latter from using once more the armed forces to insure his re-election.

The result is that we elected a President, who might not be the ablest living Filipino but who at least is supposed to be honest and well-intentioned, and is relatively better than his predecessor; how better only the future historian with the proper perspective can tell. In fact Mr. Magsaysay rode to victory because of the illusion of the masses that he saved our democracy in 1951. "Kung wala si Magsaysay, Our democracy will die"[2] was the song that gripped the popular imagination and made him an idol of the masses. And this had to happen because a President, who was not sure of winning in an honest election, wanted to get re-elected. If there had been no re-election provision in our Constitution and if the armed forces were not such a decisive factor in the conduct of our elections, Mr. Magsaysay might not be the President today,

The wisdom, therefore, of eliminating the re-election provision in the case of the President is very obvious.

It is, however, argued that the term of six years is "too long for a bad President and too short for a good President." There is something in this viewpoint, but the disadvantages of having a bad President for six years are certainly less than the evil of having a bad President for *eight* years.

The suggestion that we should jettison the presidential form of government and try the parliamentary system, followed in England and certain continental countries, so that the administration in power would always have popular confidence and would not be in disharmony with the popular will, merits thoughtful consideration; but the fundamental objection to that innovation is the ineluctable fact that we have not yet devised an effective procedure for the conduct of honest and fraud-free elections without the aid of the armed forces. Until our electorate and the candidates seeking the favors of the voters are accustomed to the holding of clean and orderly elections, without the assistance of the armed forces; until the spirit of sportsmanship becomes the presiding genius in our elections; and until the democratic principle becomes deeply ingrained in our habits and mode of

[2] Translated it means: "Our democracy will die, if there is no Magsaysay."

life, it is risky and dangerous to adopt the parliamentary system, with its frequent change of ministries and holding of elections. Such coming in and going out of governments would upset our political equilibrium and foster chaos and uncertainty in the conduct of public affairs.

II. Election of Senators by Districts and Increase in the Number of Senators.

The Constitution originally provided for a unicameral law-making body known as the National Assembly. The advantages and disadvantages of unicameralism and bicameralism were thoroughly discussed in the Convention. After mature and conscientious deliberation, that body resolved to adopt the unicameral system.

But when the move to amend the Constitution by changing the term of the President was started, all the manifestly superior advantages of unicameralism over bicameralism were speedily forgotten, and it was deemed expedient to restore the pre-Commonwealth Senate so as to dispel the impression that the only purpose of the proposed amendments was to benefit President Quezon. The amendments to the Constitution, changing the term of the President from six to four year, with re-election, and creating a Senate, served to make the structure of our Government a closer imitation of the American presidential type, with its bicameral legislative body, and thus facilitated their approval by the President of the United States.

It is futile now to resuscitate the question of whether the unicameral law-making body is preferable to the bicameral system. The two-chamber law-making body, as being the traditional pattern of our legislative department, is here to stay. It may be noted that, in spite of all the theorizing of the Convention about the intrinsic merits of unicameralism, the National Assembly proved to be a grievous disappointment to students of good government because it turned out to be mainly a robot lawmaking body, a rubber stamp of President Quezon. It was not a real deliberative body that discharged its duties for the good of the country, regardless of the wishes of the Chief Executive and without outside dictation.

The bicameral system is, therefore, advisable and desirable, if only for the reason that bicameralism makes it harder for the Chief Executive to manipulate and dominate the legislature and that it serves to check to some extent the passage of hasty and ill-considered legislation. One of the disturbing phenomena of our times is that at the end of every legislative session we are deluged with a plethora of newly enacted statutes, which, the public suspects, some Congressmen themselves have not even read and which exhibit the earmarks of not having been thoroughly reflected upon. The situation would be worse if we have a unicameral legislature.

Our lawmakers have forgotten the elementary principle that a law is always a limitation upon individual freedom and that no area of human activity should be subject to regulation, unless there is a compelling necessity for the enactment of wholesome rules to reconcile conflicting private interests and to promote the public welfare. Our lawmakers have not paused to consider that many statutes have been passed without considering the consequence that the indiscriminate enactment of laws brings our political system nearer and nearer to the socialist or authoritarian type and that individual freedom is correspondingly impaired thereby. Such an undesirable result should be avoided. A few "wise laws wisely administered" would be preferable to many laws incompetently enforced, if they are enforced at all.

While we can be reconciled to the existence of an upper legislative chamber, as the lesser evil, and expect that the country would not be considerably damaged if bicameralism were suffered to continue, nevertheless, it cannot be denied that the present composition of the Senate and the manner of electing the Senators stand in need of urgent revision and improvement.

Our experience has shown that the present number of Senators is altogether too small and that such a small number is not conducive to stability in the organization of that body. Thus, where, as in the past few years, the Senate has 13 majority members and 11 minority members, the Senate Presidency becomes a matter of bargaining, and the fate of the incumbent Senate President may hang on the loyalty of two members of the majority party; so that if two majority members can be persuaded by the minority leaders to change their allegiance, a reorganization in the Senate can be effected; and as many reorganizations can be brought about in a short time, depending on the intrigues and maneuvers to change the Senate President. The incident involving Senator Felixberto Verano is still fresh in the public mind to need recounting.

It is also possible, as a consequence of frequent reorganizations, that a "rump" Senate may be organized by the rebellious members of the Senate, as in the case of *Cuenco v. Avelino*.[3]

And another evil result of the small Senate membership is that a cabal of five or six Senators may constitute themselves into a "Little Senate" and become the dominating force in the deliberations of the Senate on pending legislation.

To avoid a repetition of such disgraceful occurrences, the remedy (the utopian remedy is to have upright Senators not swayed by petty political ambitions) is to increase the number of Senators. Such increase in the number of Senators would not always be a guarantee against attempts to disrupt the organization of the Senate, but would at least make it harder for intriguing Senators to stage a tug-of-war between the warring factions in that body. The possibility that these factions would have nearly equal

[3] G.R. No. L-2841, March 4, 1951.

strength in the Senate would be rarer than when there are only 24 members. The additional expense to be occasioned by increasing the Senate membership would be offset by the advantage of insuring stability in the leadership of that body. And if the Senate, more than the House, is regarded as a training ground for statesmen, then the more trainees there are in the art of statemanship, the better it would be for the country.

Apart from the question of increasing the membership of Senate, there is the other issue of how the Senators should be elected. On this point, our experience is again decisive. The present system of choosing Senators at large in a nationwide election is very defective. The disadvantages of such a procedure are as follows:

First, it is difficult for the candidates to campaign throughout the archipelago, not to mention the substantial expenditure of time, money and energy involved in such a national campaign.

Second, the present system is hard upon the voters, many of whom are not very proficient in writing and remembering names, so that, unless helped by sample ballots supplied by a party with a complete senatorial ticket, many a voter is not able to vote for a complete senatorial slate; or, if able to do so, he is too lazy to write all the names of the eight (8) Senators and contents himself with a few names that strike his fancy or the names of candidates for whom he has special predilection.

Third, in a system of electing Senators at large, many voters simply vote by party, as in block-voting, instead of making a choice among the candidates of the different parties, and the quixotic result is that some candidates are elected (as former Senator Vicente J. Francisco said) by "sheer force of political affiliation," instead of on their individual merits. Candidates, who would not even be elected in their own districts or home province as Congressman or Governor, are miraculously elected Senator under a system of choosing Senators at large, instead of by districts. That such a result is anomalous is very patent.

Fourth, many good men, who could be elected Senator in their own regions or provinces, refrain from running, or have no chance to run under the present system because they could not land a nomination in the party ticket, and, unless a senatorial candidate is included in the ticket of a major party, he has very slender chances of winning as an independent or non-partisan candidate; and

Fifth, it is easier to perpetrate frauds in a nationwide election of Senators than in election by districts, and at the same time it is obviously impracticable, on the part of a losing senatorial candidate to contest the election of the winning candidates.

The Constitution should, therefore, be amended by abolishing the system of electing Senators at large and restoring the pre-Commonwealth system

of electing Senators by districts. There should be at least forty-eight (48) Senators to be elected in twenty-four (24) districts as provided by law.

III. Amendment Making the Vice-President the Presiding Officer of the Senate.

Mention has been made of past incidents involving the intrigues and maneuvers to reorganize the Senate by electing a new set of officers of that body. Such incidents are possible, as already stated, whenever the strength the the parties represented in the Senate is nearly equal. The purpose of any move to reorganize the Senate is usually to change the incumbent Senate President.

Another remedy to stabilize the organization of the Senate is to adopt the provision of the American Constitution that the Vice-President should be the Presiding Officer of the Senate. During the time of President Quezon, it was wise that the Senate President should be elected by the Senators themselves because then the Senate President was the head of the Filipino participation in the Government, and it was out of the question that the Vice-Governor General should preside over the Senate.

The situation now is different. Unless the President dies or is incapacitated, the Vice-President, like the spare tire of an automobile, has nothing to do under the present setup. The practice has been for the Chief Executive to give him a cabinet portfolio, but the President is not iron-bound to do so. If the Chief Executive and the Vice-President do not belong to the same party, it is probable that the President would not designate the Vice-President to head any executive department. In that contingency, he would be as "idle as a painted ship upon a painted ocean." The American practice of making the Vice-President the Presiding Officer of the Senate should be followed in this country.

IV. Creation of an Independent Electoral Tribunal to Pass Upon Protests Against the Election of the President and Members of Congress.

The results of the 1949 national elections revealed the existence of a lamentable hiatus *valde defendus* in the governmental structure established by the Constitution. The deficiency: the absence of a competent electoral tribunal, with appropriate procedural rules, to adjudicate the protest against the election of the President, in case his election was brought about by the perpetration of irregularities and frauds.

The following provision was found in the first draft of the Constitution regarding the determination of the protest against the election of the President and Vice-President:

Whenever the election of the President or the Vice-President shall be contested, the contest shall be tried and determined, in accordance with the procedure fixed by law, by an Electoral Commission composed of ten Members of the National Assembly equally divided between, and chosen by the major parties therein, and five members of the Supreme Court including the Chief Justice who shall preside over said Commision. The Chief Justice shall designate the four other members who shall sit in the Electoral Commission.[4]

At the eleventh hour this provision was stricken out ostensibly "because it was feared that the independence and the prestige of the Supreme Court might be dragged down when its members, including the Chief Justice, would be called upon to pass upon election contests for the highest executive offices of the land."[4] Actually, according to hearsay reports, the provision in question was eliminated at the behest of President Quezon, whose election as the first President of the Commonwealth was a foregone conclusion and who naturally would not want any protest, even a nuisance protest, to be raised against his election.

Because of the absence of any law providing for the determination of protests against the election of the President, Senator Jose P. Laurel, the losing candidate in the 1949 presidential election, and his supporters were stumped as to how the election of Mr. Quirino should be contested. The only legitimate recourse under the Constitution was to prevent Mr. Quirino's proclamation by Congress, but this did not materialize because the newly elected President was in control of Congress. Thus the irony was that Senator Laurel, a leading member of the Constitutional Convention and an acknowledged authority on constitutional law, who with other sagacious and far-sighted members of the Convention could have foreseen that deficiency, found himself helpless against the harsh political facts of the 1949 elections and against the injustice of which he was the victim; and no sound and beautiful theory of constitutionalism could solve that cruel dilemma of his checkered career. It was a case of *damnum absque injuria.*

The 1949 elections, therefore, furnish the most potent argument for the establishment of an independent tribunal invested with jurisdiction over the electoral contest for the position of President, Such a tribunal should be composed of at least five (5) members with the qualifications of a Supreme Court justice. Its members should not be recruited from the Supreme Court itself, since this Court is already overburdened with its normal work. Neither should the Congress be represented in such a tribunal because congressional representation would destroy its independence and integrity, and its deliberations would be vitiated by the baleful spirit of partisanship. It should be an independent body of upright men appointed by the President with the consent of the Commission on Appointments, to hold office during good

[4] ARUEGO, *op. cit. supra* note 1, at 409-10.

behavior until they reach the age of seventy years, or become incapacitated to discharge the duties of their office, and removable by impeachment.

Such a tribunal should also be empowered to try all contests involving the election of Senators and Congressmen. The present system of submitting such contests to the adjudication of electoral tribunals composed of members of the Supreme Court and of the respective Houses of Congress is very unsatisfactory, because these tribunals could not decide with dispatch the different protests submitted for their adjudication. Moreover, the only independent members of the present electoral tribunals are the Justices of the Supreme Court, but these Justices are much too busy in the discharge of their regular duties to have time to spare for the performance of their functions as members of the electoral tribunals. On the other hand, the congressional members of the electoral tribunals cannot be expected to act independently in accordance with their honest convictions, on the basis of the merits of the contests presented for their adjudication, because they are bound by their party affiliation to vote for the side of their party colleague, whether he is the protestant or the protestee. A study of the protests decided by the electoral tribunals reveals that the congressional members vote invariably in accordance with their party labels.

It may also be advisable to fix a time limit within which the proposed tribunal should decide the cases submitted for their decision. In the hearing of protests the proposed electoral tribunal could follow the system of the Court of Industrial Relations, that is, commissioning one of its members to hear a protest and to report his findings to the tribunal *en banc* for confirmation.

It is believed that only by abandoning the present procedure of deciding the protests against the election of members of Congress and by creating an independent electoral tribunal, as above constituted, can contests against the election of the President and members of Congress be resolved with justice and without unnecessary delay. Under the present system protests take a long time to decide, as shown in the cases of Senators Eulogio Rodriguez and Claro M. Recto. In the case of Congressman Erasmo R. Cruz of Bulacan, it took the electoral tribunal more than three years to decide his protest against the election of Congressman Florante Roque, and when the protest was finally decided in favor of Congressman Cruz, he was able to take part in the regular session only for two weeks. Such a grievous defect in the present system calls for urgent correction.

The proposed electoral tribunal should be given exclusive appellate jurisdiction over election contests decided by the Courts of First Instance involving local and provincial officials. There would thus be a competent body to handle appeals in election cases and the Supreme Court would no longer be burdened with election cases.

V. Reorganization of the Judicial Department.

A. One of the peculiar features of our governmental scheme is that the Courts of First Instance and inferior courts are under the "executive supervision" of the Department of Justice.[5] It seems anomalous that the lower courts, which form an integral part of the *judicial* department, should come under the influence of the executive department. This arrangement cannot be justified even under the rule of checks and balances. A major segment of the judicial department, which in theory is the coequal of the legislative and executive departments, is thus made subordinate and inferior to the executive department.

An unscrupulous President, acting through a complaisant and servile Secretary of Justice, may as had been done in past instances, use the judges as tools to achieve his ignoble political ends. This possibility has been lessened, it is true, by the abolition of the positions of judges-at-large and cadastral judges; but as long as the Department of Justice exercises administrative supervision over Courts of First Instance and inferior courts, the danger that such supervision may be utilized by the executive officials for the purpose of tampering with the administration of justice, looms and menaces the independence of the judiciary.

Therefore, to forestall that danger, rectify that anomaly, and insure the independence of the judiciary, the Courts of First Instance and inferior courts should be removed from the jurisdiction of the Department of Justice. What office then should exercise administrative supervision of these courts?

Logic and expediency supply only one answer to that question: the Courts of First Instance and inferior courts should be placed under the administrative supervision of the Supreme Court as the highest organ in the judicial hierarchy and as the tribunal which ultimately checks the lower courts' exercise of their jurisdiction. The Supreme Court is certainly more competent and knowledgeable than an executive department in exercising administrative supervision over the Courts of First Instance and inferior courts. Moreover, under existing law, judges of the Courts of First Instance are removed upon the recommendation of the Supreme Court[6] and justices of the peace are removed upon the recommendation of the Judge of the Court of First Instance of the province where they are serving.[7]

By vesting administrative supervision over said courts in the Supreme Court, the latter's control over said courts would be complete. This arrangement would improve the administration of justice in the country, since it must be postulated or assumed that the Supreme Court, as an independent, fearless and upright body zealously dedicated to the ideal of giving the people justice, would perform in an efficient manner the task of supervision over the lower courts. Politicians would have no chance to influence the work of judges because judges would not be afraid of politicians.

[6] Rev. Adm. Code § 83, amended by Exec. Order No. 392.
[7] Judiciary Act of 1948 § 67 (R.A. No. 296).
[8] *Id.* § 97.

B. The only serious objection to such a proposal would be whether the Supreme Court, as it is now constituted and saddled as it is with an appellate jurisdiction, which is heavy and taxing, could still have the time to perform administrative control over inferior courts. To meet that objection, it becomes necessary to reorganize the Supreme Court by making the Chief Justice the head of the judicial department in the very same way that the President is the head of the executive department. If the writer's recollection is correct, a similar proposal was advocated by Senator Recto. The Chief Justice should not, as he is now, be merely one among coequals, but he should in theory and in fact be the head of judiciary. To this end, his duties as a member of the court should be lightened. While he should still take part in the deliberatoins of the court on pending cases, he should not be burdened with the writing of opinions. Indeed, it should be his prerogative to write only the opinions in cases of far-reaching importance, such as constitutional cases. This would give him time to devote his energies to the function of exercising administration over the lower courts. The division in the Department of Justice, now in charge of the Courts of First Instance and inferior courts, should be transferred to the Supreme Court. This divisions would work directly under the Chief Justice.

Strengthening the office of the Chief Justice and making him the head of the judicial department, instead of being merely the Presiding Justice of the Supreme Court and its administrative head, as contemplated in existing law, would in turn strengthen the judiciary itself, which under the present setup is admittedly the weakest among the three departments. It is incontrovertible that a strong judiciary is needed in our democracy. When the executive department becomes oppressive and despotic and the legislative department department becomes servile to the executive, the judiciary remains, as Rufus Choate noted in a famous speech to the Massachusetts Constitutional Convention, as the only citadel of the people's liberties and the trustworthy guardian of our democratic institutions. Every endeavor should therefore be made to foster and maintain a strong, upright and independent judiciary. This is one of the accepted axioms of our political philosophy.

During the administration of President Quirino, the fearless and statesmanlike stand taken by the Supreme Court in outlawing his emergency powers and in curbing his crude attempts to control the local officials, vividly underscored the blessings of having a Supreme Court that is truly supreme and that is not afraid to strike down the abuses of the executive department.

In our political system it is important, as in global politics, that an equit-

able balance of power be maintained among the three departments of the government, so that one department may not become too powerful at the expense of the two other departments and thus endanger the people's liberties. This balance of power among the three departments would be achieved only by providing for a streamlined, courageous and robust judiciary which is not overly dependent for its existence on the legislature and the executive departments.

C. In line with the plan to reorganize the Supreme Court by making the Chief Justice the head of the judicial arm of the government, it would seem advisable to divide the Supreme Court in two divisions, one division of seven justices to handle exclusively appeals in *criminal* cases, and the other division also of seven justices to handle exclusively appeals in *civil* cases and special proceedings. The Supreme Court will then be composed of fourteen justices. The Chief Justice would sit in the Civil Division, whenever he takes part in court's deliberations. The votes of four justices would be necessary to promulgate a decision in each division, except in cases involving the constitutionality of laws and treaties in which cases, the votes of five justices should be required.

In addition to its prewar jurisdiction, the Supreme Court hears appeals from the judgments of the Court of Tax Appeals and the Court of Agrarian Relations.

The increasing number of appealed cases points to the necessity of augmenting the number of justices of the Supreme Court and of dividing the work of that court between two divisions, civil and criminal. If the writer's recollection is correct, the Spanish and French Supreme Courts are also divided into civil and criminal divisions.

We must squarely face the fact that, although we have an intermediate appellate court and though the justices of the Supreme Court are conscientious and diligent, all their diligence and earnest efforts to cope with their heavy work, would not prevent delays in the disposition of cases. Not every justice could work with the speed of the late Justice Diokno, and perhaps the very speed and devotion to duty of that late jurist hastened his demise. Furthermore, it must be conceded that no justice of the Supreme Court, howsoever erudite and able he might be, could possess a thorough and deep knowledge of every branch of law, as to become a specialist in both criminal and civil cases. Judge Guillermo B. Guevara, if the writer is not mistaken, had proposed sometime ago that the Supreme Court should have a criminal division distinct from the civil division.

Our Supreme Court cannot remain always like the United States Supreme Court which sits in banc all the time. The federal Supreme Court's jurisdiction is limited to federal cases. Our Supreme Court's jurisdiction is broader than that of the federal Supreme Court's.

D. A minor reform, which may be provided by law or in the Constitution itself, is that in consonance with the position of the Supreme Court in the judicial hierarchy, the Chief Justice should at least receive an annual salary of twenty-five thousand pesos (₱25,000.00) and each Associate Justice should receive twenty-four thousand pesos (₱24,000.00) annually. This rate of compensation is commensurate with the dignity and responsibility attaching to their office. The salaries of justices of the Courts of Appeals should also be increased and the number of justices in each division should be increased also to five. This, however, may be provided for by statute.

With a revitalized judiciary, the administration of justice would be immeasurably improved; the likelihood is that we would have more judges who would dispense justice without fear or favor; and the courts would be in a better position to protect the liberties of the people against those insidious encroachments committed by executive officials which unduly impair individual freedom.

VI. Revision of the Concept of Double Jeopardy by Allowing an Appeal From a Judgment of Acquittal.

At the beginning of this century, in 1905, to be exact, a rule was laid down by the United States Supreme Court in the well-known case of *Kepner v. United States*[8] to the effect that the prosecution cannot appeal from a judgment of acquittal because such an appeal would place the accused in double jeopardy. This rule, which was developed in the common law under the system of trial by jury, was a reversal of the practice under the Spanish Code of Criminal Procedure in force in this country prior to the American regime and of the ruling of our own Supreme Court in that same *Kepner* case[9] and in two other cases,[10] allowing the prosecution to appeal from a judgment of acquittal, or providing for automatic review by the appellate court of judgments of trial courts in criminal cases involving felonies, whether the judgment was one of acquittal or conviction.

The result is that in this jurisdiction there is no symmetry in the rules governing appeals in criminal cases, because, while the accused can always appeal from a judgment of conviction, the State, on the other hand, is precluded from appealing a judgment of acquittal. The rule has been extended to promote an appeal by the prosecution for the purpose of increasing the penalty imposed on the accused.[11] Only a mistaken or misplaced solicitude and tenderness for the rights of the accused can explain the persistence of such an anachronistic and dubious rule in this jurisdiction.

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[8] 11 Phil. 669 (1904).
[9] 1 Phil. 397 (1902).
[10] United States v. Kepner, 1 Phil. 519 (1902) and United States v. Mendezona, 2 Phil. 353 (1903).
[11] People v. Ang Cho Kio, 50 O.G. 3563 (1954).

The soundness of the *Kepner* ruling was assailed in the dissent of Justice Holmes in the same case, where he said:

I regret that I am unable to agree with the decision of the majority of the court. The case is of great importance, not only in its immediate bearing upon the administration of justice in the Philippines, but, since the words used in the act of Congress are also in the Constitution, even more because the decision necessarily will carry with it an interpretation of the latter instrument. If, as is possible, the constitutional prohibition should be extended to misdemeanors (*Ex parte Lange*, 18 Wall., 163, 173), we shall have fastened upon the country a document covering the whole criminal law, which, it seems to me, will have serious and evil consequences. At the present time in this country there is more danger that criminals will escape justice than that they will be subjected to tyranny. But I do not stop to consider, or to state the consequences in detail, as such considerations are not supposed to be entertained by judges, except as inclining them to one of two interpretations, or as a tacit last resort in case of doubt. It is more pertinent to observe that it seems to me that logically and rationally a man can not be said to be more than once in jeopardy in the same cause, however often he may be tried. The jeopardy is one continuing jeopardy from its beginning to the end of the cause. Everybody agrees that the principle in its origin was a rule forbidding a trial in a new and independent case where a man already had been tried once. But there is no rule that a man may not be tried twice in the same case. It has been decided by this court that he may be tried a second time, even for his life, if the jury disagree. (*United States v. Perez*, 9 Wheat., 579; see *Simmons v. United States*, 142 U.S., 148, *Logan v. United States*, 144 U.S., 263; *Thompson v. United States*, 155 U.S., 271)), or notwithstanding their agreement and verdict, if the verdict is set aside on the prisoner's exceptions for error in the trial (*Hopt vs. People*, 104 U.S., 631, 635; 110 U.S., 574; 114 U.S., 488, 492; 120 U.S., 430, 442; *United States vs. Ball*, 163 U.S., 662, 672). He even may tried on a new indictment if the judgment on the first is arrested upon motion. (*Ex parte Lange*, 18 Wall., 163, 174; 1 Bish. Crim. Law (5th ed.), sec. 998), I may refer further to the opinions of Kent and Curtis in *People vs. Olcott* (2 Johns. Cas. 301); S.C. (2 Day, 507, n.); *United States vs. Morris* (1 Curtis, 23), and to the well-reasoned decision in *State vs. Leo* (65 Connecticut, 265).

If a statute should give the right to take exceptions to the Government, I believe it would be impossible to maintain that the prisoner would be protected by the Constitution from being tried again. He no more would be put in jeopardy a second time when retried because of a mistake of law in his favor, than he would be when retried for a mistake that did him harm. It can not matter that the prisoner procures the second trial. In a capital case, like *Hopt vs. People*, a man cannot waive, and certainly will not be taken to waive without meaning it, fundamental constitutional rights. (*Thompson vs. Utah*, 170 U.S., 343, 353, 354). Usually no such waiver is expressed or thought of. Moreover, it can not be imagined that the law would deny to a prisoner the correction of a fatal error, unless he should waive other rights so important as to be saved by an express clause in the Constitution of the United States.

It might be said that when the prisoner takes exceptions he only is trying to get rid of a jeopardy that already exists — that so far as the verdict is in his favor, as when he is found guilty of manslaughter upon an indictment for murder, according to some decisions he will keep it and can be retried only for the lesser offense, so that the jeopardy only is continued to the extent that it already has been determined against him, and is continued with a chance of escape. I believe the decisions referred to be wrong, but, assuming them to be right, we must consider his position at the moment when his exceptions are sustained. The first verdict has been set aside. The jeopardy created by that is at an end, and the question is what shall be done with the prisoner. Since at that moment he no longer is in jeopardy from the first verdict, if a second trial in the same case is a second jeopardy even as to the less offense, he has a right to go free. In view of these difficulties it has been argued that on principle he has that right if a mistake of law is committed at the first trial. (1 Bish. Crim. Law (5th ed.), secs. 999, 1047). But even Mr. Bishop admits that the decisions are otherwise, and the point is settled in this court by the cases cited above. That fetish happily being destroyed, the necessary alternative is that the Constitution permits a second trial in the same case. The reason, however, is not the fiction that a man is not in jeopardy in case of a misdirection, for it must be admitted that he is in jeopardy, even when the error is patent on the face of the record, as when he is tried on a defective indictment, if judgment is not arrested. (*United States vs. Ball*, 163 U.S. 662). Moreover, if the fiction were true, it would be equally true when the misdirection was in favor of the prisoner. The reason, I submit, is that there can be but one jeopardy in one case. I have seen no other, except the suggestion of waiver, and that I think can not stand.

If what I have said so far is correct, no additional argument is necessary to show that a statute may authorize an appeal by the Government from the decision by a magistrate to a higher court, as well as an appeal by the prisoner. The latter is every day practice, yet there is no doubt that the prisoner is in jeopardy at the trial before the magistrate, and that a conviction or acquittal not appealed from would be a bar to a second prosecution. That is what was decided, and it is all that was decided or intimated, relevant to this case, in *Wemyss vs. Hopkins* (L.R., 10 Q. B., 378). For the reasons which I have stated already, a second trial in the same case must be regarded as only a continuation of the jeopardy which began with the trial below.[12]

The United States Supreme Court itself in the subsequent case of *Palko v. Connecticut*,[13] decided in 1937, in effect abrogated the *Kepner* ruling, adopted as the prevailing rule the dissent of Justice Holmes, and upheld the constitutionality of a statute allowing the prosecution to appeal from a judgment of acquittal, as a practice which is not oppressive nor obnoxious to the concept of due process. Said Justice Cardozo in the *Palko* case:

We do not find it profitable to mark the precise limits of the prohibition of double jeopardy in federal prosecutions. The subject was much considered in *Kepner v. United States*, 195 U.S. 100, 49 L. ed. 114, 24 S. Ct. 797, 1 Ann. Cas. 655, decided in 1904 by a closely divided court. The view was there expressed for a majority of the court that the prohibition was not confined to jeopardy in a new and independent case. It forbade jeopardy in the same case if the new trial was at the instance of the government and not upon defendant's motion. Cf. *Troño v. United States*, 199 U.S. 521, 50 L. ed. 292, 26 S. Ct. 121, 4 Ann. Cas. 773. All this may be assumed for the purpose of the case at hand, though

[12] 11 Phil. 669, 102-705 (1904).
[13] 302 U.S. 319 (1937).

the dissenting opinions (195 U.S. 100, 134, 137, 49 L. ed. 144, 126, 127, 24 S. Ct. 797, 1 Ann. Cas. 655) show how much was to be said in favor of a different ruling. Rightminded men, as we learn from those opinions, could reasonably, even if mistakenly, believe that a second trial was lawful in prosecutions subject to the Fifth Amendment, if it was all in the same case. Even more plainly, right-minded men could reasonably believe that in espousing that conclusion they were not favoring a practice repugnant to the conscience of mankind. Is double jeopardy in such circumstances, if double jeopardy it must be called, a denial of due process forbidden to the states? The tyranny of labels (*Snyder v. Massachusetts*, 291 U.S. 97, 114, 78 Ld. ed. 674, 682, 54 S. Ct. 330, 90 A.L.R. 575) must not lead us to leap to a conclusion that a word which in one set of facts may stand for oppression or enormity is of like effect in every other".[14]

. . . .

. . . . Is that kind of double jeopardy to which the statute has subjected him a hardship so acute and shocking that our policy will not endure it? Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions? *Herbert v. Louisiana*, 272 U.S. 312, 71 L. ed. 270, 47 S. Ct. 103, 48 A.L.R. 1102, supra. The answer surely must be 'no'. What the answer would have to be if the state were permitted after a trial free from error to try the accused over again or to bring another case against him we have no occassion to consider. We deal with the statute before us and no other. The state is not attempting to weary the accused out by a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from legal error. *State v. Felch*, 92 Vt. 477, 105 A. 23; *State v. Lee*, 65 Conn., 265, 30 A. 1110, 27 L.R.A. 498, 48 Am. St. Rep. 202, supra. This is not cruelty at all, nor even vexation in any immoderate degree. If the trial had been infected with error adverse to the accused, there might have been review at his instance, and as often as necessary to purge the vicious taint. A reciprocal privilege, subject at all times to the discretion of the presiding judge (*State v. Carabetta*, 106 Conn. 114, 137 A. 394), has now been granted to the state. There is here no seismic innovation. The edifice of justice stands, in its symmetry, to many, greater than before.[15]

In the Constitutional Convention there was a proposal to abrogate the *Kepner* ruling and to allow an appeal from a judgment of acquittal. Delegates Antonino Barrion of Batangas justified the proposal in this wise:

I consider, gentlemen, that an appeal against an acquitting decision should not be considered jeopardy because the decision has not as yet become final. It can be considered jeopardy only if that sentence has become final. I mean to say if the sentence has been appealed to and confirmed by the Supreme Court or if the period fixed by the law for the appeal has already expired.

We know, gentlemen, that we have sad cases in which the offended party come almost weeping because the accused has been acquitted, and the fiscal and the offended party do not understand why he has been acquitted, *leaving them no more recourse*. The judge is human, has his prejudices; he may err. But if we give to the offended party the same right that the accused has in order that the decision of the trial judge may be reviewed by a more competent authority, the Supreme Court, then we shall have given satisfaction to the offended party.[16]

[14] *Id.* at 322-23.
[15] *Id.* at 328.

Delegate Barrion's amendment was inexplicably defeated. In the cases of *People v. Tan*[17] and *People v. Ang Cho Kio*,[18] the Supreme Court implied from the defeat of the Barrion amendment that the *Kepner* ruling is still a part of our law and that the double jeopardy clause in the Constituion does not allow an appeal from a judgment of acquittal. There is therefore no alternative but to amend the Constitution, if the *Kepner* ruling is to be revoked.

The reasons advanced by Delegate Barrion, those cogently set forth by Justice Holmes in his dissent, and the opinion of the United States Supreme Court in the *Palko* case all justify the abandonment of the *Kepner* ruling and the modification of the double jeopardy clause in our Constitution. If the writer is not mistaken, no less an eminent lawyer than former Senator Vicente J. Francisco, who had secured acquittals of many accused persons and who has a profound knowledge of criminal law and procedure, is convinced that an appeal from a judgment of aquittal should be permitted.

Revision of the concept of double jeopardy would prevent a recurrence of the unpleasantness caused by judgments of trial courts in criminal cases, which have not met with universal approval, such as the decisions in the *Yabut*, *Lacson* and *Taruc* cases. The State should be allowed to appeal, not only from a judgment of acquittal, but also from judgments wherein the penalty imposed by the trial court is lower than the penalty that should be properly imposed on the accused under the law.

In the *Taruc* case,[19] for example, the matter of whether the penalty imposed on the Huk Supremo was correct or not should have been submitted to the Supreme Court for final determination, since that highest court has the last word and is the ultimate arbiter on questions of law. There are other cases, where due to inadvertence of trial judges or deliberate intent to cause a miscarriage of justice, accused persons were acquitted without sufficient justification. Such cases would not be possible if the prosecution were allowed to appeal from a judgment of acquittal.

VII. Legislative Investigation of the Actuations of the Armed Forces and the General Auditing Office.

One of the potent weapons of the United States Congress is the power of investigation, the prerogative to conduct an intensive inquiry into the manifold activities of government agencies and of private persons with a view of ascertaining the necessity of legislation to correct extant evils and preventing the recurrence of anomalies. Such a power, judiciously employed,

[16] 1 Aruego, *op. cit. supra* note 1, at 191.
[17] G.R. No. L-2705.
[18] 50 O.G. 3563 (1954).
[19] People v. Pomeroy, G.R. No. L-8229, Nov. 28, 1955.

serves as an effective instrument for exposing irregularities in the conduct of public business and in determining the feasibility and wisdom of regulating certain fields of human endeavor. Our own Congress, notably its Blue Ribbon Committee, has employed the power of investigation for ferreting out irregularities, graft and corruption. Legislative investigations also arouse and crystallize public opinion on certain issues and thereby contribute to the establishment of a clean government and the suppression of crooked practices.

In this connection, there are two government agencies which should come within what may be called the "investigative" jurisdiction of the Congress and its committees. These agencies are the *Armed Forces* and the *General Auditing Office*. While under the present law, the Congress may already have the power to investigate the activities of these two agencies, still, in order to leave no room for doubt, it is fitting and proper that its power to do so should be clearly granted in the Constitution.

A. It has been previously stated that the Armed Forces always pose as a potential menace to our democratic processes because of their improper interference in the conduct of elections, like the fraudulent 1949 elections. And yet no one can control the armed forces except the President, their commander-in-chief, and also Congress, through its power to fix the appropriations for military expenditures. The President cannot be expected to prevent the armed forces from engaging in electioneering activities, which subvert the electoral process, because such activities will usually be performed under the inspiration and instigation of the President himself to further his political aspirations and the aspirations of the party to which he belongs.

Our armed forces are becoming bigger and bigger every year. A good portion of the public funds is spent for the maintenance of the army, instead of being devoted to the improvement of the educational system, the construction of essential public works, and the implementation of measures designed to raise the standard of living and ameliorate the lot of the suffering masses. The paradox is that although we spend substantial amounts for the armed forces, the peace and order situation is not very satisfactory; bandits and Huks still infest certain areas; and the army had to wage a long and expensive campaign to capture Kamlon. What is worse is that in time of war our army would not really be able to accomplish much, since our security is underwritten by the United States to whom, following the law of self-preservation, we have granted bases even at the expense of our national dignity and prestige.

The existence of a democracy is always threatened by a big standing army. The experience of Latin American countries should be a lesson to us. In the United States there is a traditional distrust towards a huge military establishment. If in England and in the United States the armed forces have

not subverted their democratic institutions, it is because democracy in these countries is deeply rooted and not merely a transplanted way of life, as in our case; the Anglo-Saxons have a genius for orderly representative government; and public opinion in these countries is very strong, insomuch that no military man would dare seize the reins of power with the help of the army. The same cannot be said of the Philippines.

In our country no elections have so far been conducted without the army's help. It is all right if the army simply keeps order during election time; but the truth is that the armed forces are always a potential instrument which can be used to consummate the political ambition of whoever controls the army. Mention has already been made of the fact that Mr. Magsaysay was made a candidate in 1953 because he was (and still is, of course) strong with the army at that time, and, with him as an opponent, Mr. Quirino would hesitate to use the armed forces to insure his re-election. Without in anyway impugning at all the integrity of General Manuel Cabal, and that of President Magsaysay, who married sisters, mention should also be made at this juncture of the persistent talk in many circles that with General Cabal as Chief of the Constabulary or Chief of Staff in 1957, Mr. Magsaysay's re-election is assured because he will have the full support of the Armed Forces. Such a talk, whether true or not, simply reflects the popular impression as to the influential role played by the army in the choice of the Chief Executive. Our case is therefore no different in the last analysis from the situation obtaining in Latin American countries where the army is the real sovereign.

How to prevent the army from being a decisive element in the conduct of our elections is one of the gravest problems of our times. It is to partly solve this problem that the writer advocates that either House of Congress through its committees be expressly granted the power to investigate every activity or actuation of the Armed Forces. It may even be advisable that the ranking officers of the Armed Forces be included among the officials subject to impeachment. Certainly, the people, through their representatives, have a right to know what the Armed Forces have done and are doing, so that if irregularities have been committed, the proper remedial measures can be undertaken.

B. Another branch of the government service that should come under the power of Congress to investigate is the General Auditing Office, which is supposed to be an independent body, and it was made so because of the nature of its functions, which make it the watchdog of public funds.

But suppose the watchdog is not performing its functions; suppose the watchdog and the watched are in cahoots to defraud the government, how should the government protect itself? Prosecute the culprits and dismiss them from the service. But before prosecution and dismissal could be

effected, the anomalies should first be discovered, and it is the process of discovering the anomalies that usually takes time because the very government officials, who should know those anomalies and expose the same, remain silent, tolerant or indifferent. That is where the Congress should come in.

It is a matter of public knowledge that the postwar government has not been a very honest one. Corruption seemed to have infected practically all branches of the government service. An honest official seemed to be as rare as Diogenes' honest man. Not all the dishonesty and graft in the government have been discovered or unearthed. And yet it is precisely the duty of the auditors, or representatives of the General Auditing Office, to prevent or discover the venalities and irregularities committed by government officials. In some instances, as in the school supplies scandals, some auditors were reported to have been directly in connivance with the property and supply officers, to cheat the government. The malversation and defraudation committed by accountable officers could have been checked had the auditors been more vigilant.

To date there has been no complete and thorough investigation of the workings of the General Auditing Office. No administrative agency has undertaken the task. Until a system could be devised for auditing the work of the auditors, it seems necessary to give Congress blanket and unrestricted authority to investigate the General Auditing Office from time to time for the purpose of finding out if that Office is efficiently discharging its duties so as to be able to enact the necessary measures which are warranted by its findings.

This explains the necessity for a constitutional amendment making the General Auditing Office and the Auditor General subject to congressional investigation. The amendment is required to prevent the Auditor General from setting up the pretext that his office is a fourth department of the government beyond the reach of legislative investigations.

VIII. Amendments Regarding the Pardoning and the Emergency Powers of the President

A. An amendment restricting the power of the President to grant pardons is necessary. The President can easily abuse the pardoning power by setting free convicted persons who have strong political connections or who may be useful to the President or the party in power during election time. The use of goons in past elections had been resorted to by the party in power. According to newspaper reports of the investigation conducted by the Blue Ribbon Committee headed by Senator Lorenzo Tañada, abuses in the exercise of the pardoning power were committed during the administration of President Quirino. Unjustified, reckless and capricious exercise of the pardoning power nullifies the purpose of the criminal law and dulls the effectiveness of the judgments in criminal cases.

Someone has defined democracy as a system where, if one commits an offense, he will not be charged; if he is charged, he will not be prosecuted; if prosecuted, he will not be tried; if he is tried, he will not be convicted; if convicted, he will not go to jail; and if he goes to jail, he will be pardoned. This is, of course, an exaggeration, but there is a particle of truth in it.

Article 5 of the Revised Penal Code empowers the courts to recommend to the Chief Executive the grant of clemency in cases where a strict enforcement of the provisions of the Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense. The power to pardon lodged in the Chief Executive should properly be exercised only in these cases and in other meritorious cases indicated in other provisions of the Revised Penal Code.

It is suggested that the Constitution be amended by proving that the grant of absolute pardon be made with the concurrence of the Chief Justice of the Supreme Court; that either House of Congress be expressly authorized to investigate the President's exercise of the pardoning power; and that his unreasonable and abusive exercise thereof be made a ground for impeachment.

B. Section 26 of Article VI of the Constitution provides:

> In times of war or other national emergency, the Congress may be law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.

This provision should be clarified in the light of the decision of the Supreme Court in the *Emergency Powers cases*.[20] In these cases it was held that the grant of emergency powers to the President is for a period "coextensive with the inability of Congress to function, a period ending with the convening of that body." Justice Tuason, speaking for the Supreme Court said:

> What then was the contemplated period? President Quezon in the same paragraph of his autobiography furnished part of the answer. He said he issued the call for a special session of the National Assembly 'when it became evident that we were completely helpless against air attack, and that it was *most unlikely the Philippine Legislature would hold its next regular session* which was to open on January 1, 1942.' It can easily be discerned in this statement that the conferring of enormous powers upon the President was decided upon with specific view to the inability of the National Assembly to meet. Indeed no other factor than this inability could have motivated the delegation of powers so vast as to amount to an abdication by the National Assembly of its authority. The enactment and continuation of a law so destructive of the foundations of democratic institutions could not have been conceived under any circumstance short of a complete disruption and dislocation of the normal processes of government. Anyway, if we are to uphold the constitutionality of the act on the basis of its

[20] 45 O.G. 4411 (1949).

duration, we must start with the premises that it fixed a definite, limited period. As we have indicated, the period that best comports with the constitutional requirements and limitations with the general context of the law and with what we believe to be the main if not the sole *raison d'etre* for its enactment, was a period coextensive with the inability of Congress to function, a period ending with the convening of that body.[21]

The wisdom of incorporating in section 26 of Article VI of the Constitution the ruling laid down in the emergency powers cases, as a safeguard against dictatorship and to avoid a repetition of the anomaly during the Quirino administration, when the President continued enjoying his emergency powers, although Congress was already holding sessions, is beyond the pale of controversy.

IX. Amendments to Clarify the Provisions of the Constitution Regarding Citizenship, Habeas Corpus, the Power of the President Over Local Officials, and the Krivenko Ruling

There are other provisions of the Constitution which need clarification because they are ambiguous or their application to certain cases is not clear. To avoid expensive and wasteful litigation said provisions should be clarified by means of appropriate amendments.

A. Section 1 of Article IV of the Constitution provides that "those whose fathers are citizens of the Philippines" are Filipino citizens. Does this provision apply if the father is illegitimate? It would seem that it does apply, but to dissipate any ambiguity, it should be clarified.

Article IV also provides that "those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship" are Filipino citizens. A controversial question has arisen under this provision. When should the mother be a Filipino citizen: at the time of her marriage to a foreigner, at the time of the child's birth, or at the time the election is to be made? To resolve the controversy, it should be provided that under that provision, it is sufficient if the mother is a Filipino citizen at the time she married her alien husband and that a child could still elect Philippine citizenship although his or her mother was no longer a Filipino citizen at the time the election is to be made.

Another doubtful case under Article IV is that of the illegitimate child of a Filipino mother and an alien father. Under the rules of private international law, and the rulings of the Supreme Court in the cases of *U.S. v. Ong Tianse*,[22] *Santos Co. v. Government*,[23] *Serra v. Republic*,[24] *Quimsuan v. Republic*,[25] *and Talaroc v. Uy*,[26] such child is a Filipino citizen. However, the rulings in said cases refer to those who had reached the age of majority prior to May 14, 1935, when the Constitution was adopted. Now, under the Constitution, should *illegitimate* children of a Filipino mother and an alien father still be required to elect Philippine citizenship upon reaching the age of majority? Does the word "mother" in Article IV refer only to legitimate mother or does it include the natural mother? Amendment is necessary to obviate any doubt on the matter.

B. The *Politburo* cases have revealed the existence of an ambiguity in the provisions of the Constitution regarding the suspension of the writ of habeas corpus. Article III of the Constitution provides that the writ shall not be suspended except in cases of "invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended whenever during such period the necessity for such suspension exists."[27] On the other hand, section 10, paragraph 2, Article VII of the Constitution provides that "in case of invasion, insurrection, or rebellion, or *imminent danger thereof*,[28] when the public safety requires it," the President "may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law." The words "imminent danger thereof" are not found in Article III.

These two provisions should be harmonized. It is also desirable that the effect of the suspension of the writ of habeas corpus on the right to bail be defined with precision.

C. A controversy has also arisen relative to the extent of the President's power over local officials. While paragraph 1, section 10 of Article VII of the Constitution provides that the President "shall have control of all the executive departments, bureaus or offices," it is also provided in the same paragraph that he shall "exercise general supervision over all local governments as may be provided by law." What does "general supervision" over local officials contemplate? Does it include the power of the President to suspend or investigate municipal and provincial officials? Two cases, *Lacson v. Roque*[29] *and Mondano v. Silvosa*,[30] have stressed that the President's power of "supervision" over local governments does not include the power to suspend or investigate a local official in connection with offenses which have nothing to do with his duties. The Office of the President is not satisfied with this interpretation of the Constitution. An attempt has been made in a pending case to reconsider he ruling in the *Silvosa*

[21] *Id.* at 4419.
[22] 29 Phil. 332 (1915).
[23] 52 Phil. 543 (1928).
[24] G.R. No. L-4223, May 12, 1952.
[25] 49 O.G. 492 (1953).
[26] G.R. No. L-5397, Sept. 26, 1952.
[27] Phil. Const. art. III § 1 (14).
[28] Emphasis added.
[29] 49 O.G. 93 (1953).
[30] 51 O.G. 2884 (1955).

case. This shows that the scope of "supervision" is not altogether clear. It should be clarified by amendment.

4. In the well known case of *Krivenko v. Register of Deeds*,[31] the provision in Article XIII of the Constitution —

> Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations, qualified to acquire or hold lands of the public domain in the Philippines.[32]

was construed as meaning that aliens are prohibited from acquiring private residential, industrial and commercial lands and not merely strictly agricultural lands. There were dissenting opinions in said case. Did the Supreme Court, correctly interpret the meaning of "private agricultural land" in section 5 of Article XIII? Some opine that the Supreme Court's interpretation is not correct because the Constitutional Convention never intended that aliens should be *absolutely* barred from acquiring any kind of lands. Clarification of the provision in question is imperative.

The foregoing discussion gives only an outline of the reforms that might be considered in amending the Constitution. The details and formalization of the amendments can be readily accomplished by the amending body. That the necessity for such reforms exists is the sober verdict of disinterested, civic-spirited citizens who have displayed an authentic interest in the establishment of good government and in the promotion of the general welfare. The Philippine Lawyers Association is performing a very commendable task in highlighting the urgency of such reforms.

While the Constitution has an element of permanence consistent with the stability and enduring character of our political system, that does not mean that, like the laws of the Medes and the Persians, it is fixed and unchangeable. The Sage of Monticello more than a century ago indicated the proper attitude toward constitutional changes, and his words have a contemporary quality that renders them appropriate in these times:

> Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment . . . . I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with . . . . But I know also that laws and institutions must go hand in hand with the progress of the human mind . . . . As new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regiment of their barbarous ancestors . . . . Each generation . . . has a right to choose for itself

[31] 79 Phil. 461 (1947).
[32] PHIL. CONST. art. XIII § 5.

> the form of government it believes the most promotive of its own happiness.... A solemn opportunity of doing this *every 19 to 20 years* should be provided by the constitution . . . . This corporeal globe, and everything upon it, belong to its present corporeal inhabitants, during their generation. They alone have a right to direct what is the concern of themselves alone . . . . If this avenue be shut..., it will make itself heard through that of force, and we shall go on, as other nations are doing, in the endless circle of oppression, rebellion, reformations; and oppression, rebellion, reformation, again; and so on forever.