

the organization to be controlled by Communists may be a cause for blaming them also for the fatal fate of the CLO. But considering the fact that under the democratic system, the rule of the majority must prevail, the non-communist leaders, being in the minority, could have done no more than to voice their opposition to whatever policies adopted by the Communist members of the CLO directorate foreign to the legally and legitimately intended purposes of the CLO. That they remained in the organization knowing that the CLO was virtually a Communist agency should not be held against them. If they remained as they did, it was perhaps because they wanted to stem the tide of Communist influence in the organization. If they failed, it was too bad. At least they tried.

That the CLO could well be ranked among the best organized labor unions of the country would seem to be unquestionable. As far as structural organization is concerned, without considering of course that the organizational set-up of the CLO was patterned after that of the CPP, it could well serve as a model for future labor unions. Its purposes, taking them solely for their face value, were in accord with the modern trend of improving the welfare of the wage earners. It is to be hoped a better fate would await the next militant organization of laboring men.

JUAN PONCE-ENRILE

THE ROLE OF CONGRESS AS BOARD OF CANVASSERS IN PRESIDENTIAL ELECTIONS

The Constitution provides, that the election returns duly certified shall be transmitted to the seat of the National Government, directed to the President of the Senate, who shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted and the results thereof declared.¹ A similar provision in the United States Constitution provides, that the certificates of electoral returns shall be transmitted to the seat of the Government of the United States, directed to the President of the Senate, who shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the

¹ "The President shall hold his office during a term of four years and, together with the Vice-President chosen for the same term, shall be elected by direct vote of the people. The returns of every election for President and Vice-President, duly certified by the board of canvassers for each province or city, shall be transmitted to the seat of the National Government, directed to the President of the Senate, who shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted. The persons respectively having the highest number of votes for President and Vice-President shall be declared elected; but in case two or more shall have an equal and the highest number of votes for either office, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the Members of the Congress in joint session assembled." Art. VII, Sec. 2.

NOTES AND COMMENTS

votes shall then be counted and the results thereof declared.² It should be noted, that in this respect, the Philippine and the American Constitutions are similar. In fact, the Philippines took for its model, the provision in the American Constitution.³ In elucidating therefore, the scope of the powers granted to Congress by the constitutional provision under consideration, American precedents would be of aid.⁴

The Constitution directs, as above indicated, that the returns of the votes cast shall be transmitted to the seat of the National Government, directed to the President of the Senate, who shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted and the results thereof declared. No declaration, it is to be observed, is made as to who shall make the count and afterwards declare the results thereof. That it is Congress which is so empowered, seems to be beyond question however.

Since the birth of the Republic of the Philippines on July 4, 1946, Congress had two occasions to act as Board of Canvassers for presidential elections. The first was on May 25, 1946, when that body declared the election of Messrs. Manuel A. Roxas and Elpidio Quirino as President and Vice-President respectively;⁵ and, the sec-

² "The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of death, or other constitutional disability, of the President." Amendment XII, 1.

³ ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION*, Vol. I, p. 409.

⁴ See: *United States v. Bustos*, 37 Phil. 740. *Scheneckenburger v. Moran*, 63 Phil. 253. TANADA AND FERNANDO, *CONSTITUTION OF THE PHILIPPINES*, 1949 ed., pp. 18-20.

⁵ Resolution to declare the result of the General Elections held on the twenty-third day of April, 1946, for the offices of President and Vice-President of the Philippines:

"WHEREAS, in pursuance of the provisions of section twelve of Commonwealth Act Numbered Seven Hundred and twenty-five, entitled 'An Act to provide for the

ond was on December 13, 1949, when Messrs. Elpidio Quirino and Fernando Lopez were declared President-elect and Vice-President-elect respectively.⁶ In both instances, the same procedure was fol-

election for President and Vice-President of the Philippines, Senators and Members of the House of Representatives, and appropriating the necessary funds therefor,' a Joint Committee of both Houses has canvassed the returns and publicly counted the votes cast at the general elections held on April 23, 1946, for the offices of President and Vice-President, determined the result thereof, and has found that for the office of President of the Philippines, Manuel A. Roxas has received one million, three hundred thirty-three thousand, three hundred ninety-two (1,333,392) votes; Sergio Osmeña has received one million, one hundred twenty-nine thousand, nine hundred and ninety-six (1,129,996) votes; and Hilario C. Moncado has received eight thousand, five hundred and thirty-eight (8,538) votes; and for the office of Vice-President of the Philippines, Elpidio Quirino has received one million, one hundred sixty one thousand, seven hundred and twenty-five (1,161,725) votes; Eulogio Rodriguez Sr. has received one million, fifty-one thousand, two hundred and forty-three (1,051,243) votes; and Luis S. Salvador has received five thousand, eight hundred and seventy-nine (5,879) votes, in accordance with the certificate of canvass of returns of votes for President and Vice-President of the Philippines, duly certified by the provincial or city board of canvassers of the respective provinces or cities; and

"WHEREAS, Manuel A. Roxas and Elpidio Quirino have received the highest number of votes legally cast for the offices of President and Vice-President of the Philippines, respectively: Now, therefore,

"Be it resolved by the Senate and House of Representatives of the Philippines in joint session assembled in the Hall of the House of Representatives:

"To approve, as they hereby approve, the report of the Joint Committee of both Houses on the canvass of the votes legally cast at the general elections held on the twenty-third day of April, nineteen hundred and forty-six, and, by virtue thereof, to declare, as they hereby declare, that Manuel A. Roxas and Elpidio Quirino have been elected President and Vice-President of the Philippines, respectively."

"Adopted, May 25, 1946."

⁶ Resolution to declare the result of the General Elections held on the eight day of November, Nineteen Hundred and Forty-Nine, for the offices of President and Vice-President of the Philippines:

"WHEREAS, in pursuance of the provisions of section six of Republic Act Numbered One hundred-eighty, otherwise known as the Revised Election Code, the President of the Senate has canvassed the returns and publicly counted the votes cast in the general elections held on November 8, 1949, for the offices of President and Vice-President of the Philippines, has determined the result thereof, and has found that for the office of President of the Philippines, Elpidio Quirino has received one million, eight hundred three thousand, eight hundred eight (1,803,808) votes; Jose P. Laurel had received one million, three hundred eighteen thousand, three hundred thirty (1,318,330) votes; and Jose Avelino has received four hundred nineteen thousand, eight hundred ninety (419,890) votes, and for the office of Vice-President of the Philippines, Fernando Lopez has received one million, seven hundred forty-one thousand, two hundred eighty-four (1,741,284) votes; Manuel C. Briones has received one million, one hundred eighty-four thousand, two hundred fifteen (1,184,215) votes; and Vicente J. Francisco has received four hundred forty-four thousand, five hundred ten (444,510) votes, in accordance with the certificates of canvass of returns of votes for President and Vice-President of the Philippines, duly certified by the provincial or city board of canvassers of the respective provinces or cities; and

lowed. The procedure as established by the 1946 and the 1949 proclamations is as follows:⁷

1. The two Houses of Congress meet separately to determine the existence of a quorum.⁸ A roll call is taken for that purpose. The quorum having been established, both Houses then separately approve a resolution for the holding of a joint session;

2. The joint session is then held, with the President of the Senate and the Speaker of the House presiding jointly;

3. The President of the Senate then appoints a committee composed of members of the two Houses to open the envelopes containing the certificates of election returns submitted by the provincial and the city Boards of Canvassers and make the count;⁹

4. The joint committee so appointed then proceeds to count the votes in joint session, assisted by the Secretaries of both Houses;

5. The joint committee then reports the results of the count to the joint session;

6. A resolution¹⁰ is then introduced to provide for the proclamation of the President-elect and the Vice-President-elect;

7. The resolution is then voted upon by the two Houses separately;

8. After the approval of the resolution, the President of the Senate then proclaims the President-elect and the Vice-President-elect;

"WHEREAS, Elpidio Quirino and Fernando Lopez have received the highest number of votes cast for the offices of President and Vice-President of the Philippines, respectively: Now, therefore,

"Be it resolved by the Senate and House of Representatives of the Philippines in Joint Session assembled in the Hall of the Senate of the Philippines:

"To approve, as they hereby approve, the report of the President of the Senate on the canvass of the votes cast in the general elections held on the eighth day of November, nineteen hundred and forty-nine for President and Vice-President of the Philippines, and, by virtue thereof, to declare, as they hereby declare, that Elpidio Quirino and Fernando Lopez have been duly elected President and Vice-President of the Philippines, respectively.

"Adopted, December 13, 1949.

"We hereby certify that the foregoing Resolution was adopted by both Houses of Congress of the Republic of the Philippines in joint session assembled on December 13, 1949, in accordance with Article VII, Section Two of the Constitution of the Philippines.

Acting Secretary of the Senate.

Secretary of the House of Representatives."

⁷ The Manila Times, December 11, 13, 14, 1949. The Manila Chronicle, December 13, 14, 1949.

⁸ In 1949, this separate session was dispensed with in accordance with an agreement made by the President of the Senate and the Speaker of the House. The Manila Chronicle, December 14, 1949.

⁹ In 1949, the joint committee appointed by the President of the Senate was composed of Senators Emiliano T. Tirona and Carlos P. Garcia, and Representative Raul Leuterio.

¹⁰ For the 1946 and the 1949 Resolutions, see Notes 8 and 9.

9. A committee is then created to inform the persons concerned of their election as President and Vice-President respectively;

10. The joint session then adjourns.

In the United States however, the question was raised in 1876 as to whether it was Congress or the President of the Senate alone, that was empowered by the Constitution to canvass and declare the results of presidential elections.¹¹ In the presidential election of 1876, Messrs. Rutherford B. Hayes and Samuel J. Tilden were the candidates for the presidency. Contests arose in several States between the Hayes and the Tilden electors, and the question was critical as to which set of electoral returns in each of them was entitled to be counted. The disputed States held enough votes to tip the scales in favor of one or the other. Mr. Tilden, the Democratic candidate, had 184 votes, with but 185 votes necessary for election. Mr. Hayes, the Republican candidate, had but 165 votes. The Senate was composed of a large majority of Republicans, the party to which Mr. Hayes belonged; the House of Representatives of Democrats, the party to which Mr. Tilden belonged. The Republicans, controlling as they did the Senate, came out with the contention that it was the President of the Senate alone who was empowered to make the count and declare the results thereof, the presence of both Houses of Congress being required merely for the purpose of witnessing the exercise of that power by the President of the Senate. On the other hand, the Democrats maintained that it was Congress that was so empowered, the President of the Senate acting merely as a ministerial functionary. An impasse followed.

The Republicans however, realizing the fact that in none of the previous cases since 1793 when a regular procedure was first established, did the President of the Senate exercise any but the ministerial function of receiving the certificates, opening them, and laying them down before the two Houses, did not push their contention with vigor. Consequently, an agreement was reached by both Houses to refer the dispute to an Electoral Commission to be created by them. The Republican contention was thus abandoned, and both Houses of Congress proceeded in accordance with the practice established in the past.

The theory that the power of counting belongs to the two Houses in joint meeting has been stated as follows: ¹² "The exclusive jurisdiction of the two Houses to count the electoral votes by their own servants and under such instructions as then may deem proper to give on occasions arising during the counting, or by previous concurrent orders, or by standing joint rules, or by formal enactments

¹¹ For an account of the Disputed Election of 1876 with comments thereon, see: WILLOUGHBY, *THE CONSTITUTIONAL LAW OF THE UNITED STATES*, 2nd ed., Vol. III, pp. 1457-1462. CORWIN, *THE PRESIDENT: OFFICE AND POWERS*, 3rd ed., pp. 54-58. TUCKER, *THE CONSTITUTION OF THE UNITED STATES*, Vol. II, pp. 701-704. Reference to this Disputed Election of 1876 will be made again in connection with the discussion of the vital question, as to whether Congress is empowered to go behind the election returns in the exercise of its power to canvass the same.

¹² WILLOUGHBY, *op. cit.*, pp. 1461, 1462.

of law has been asserted from the beginning of the government; that exclusive jurisdiction has been exercised at every presidential election from 1793, when a regular procedure was first established, until and including the last count of electoral votes in 1873. It was exercised by concurrent orders of the two Houses from 1793 to 1865, and by a standing joint rule in 1865, 1869, and 1873. Every counting at these twenty-one successive presidential elections has been conducted under and governed by the regulations thus imposed. These regulations have prescribed every step in the procedure; have defined and regulated the powers of every person who has participated in any ministerial service in the transaction. They have controlled every act of the President of the Senate in respect to the counting, except the single act of opening the packages of the electoral votes transmitted to him by the colleges, which is a special duty imposed on him by the Constitution. During all this long period, the exclusive jurisdiction of the two Houses exercised upon numerous successive occasions, has never, in a single instance, been the subject of denial, dispute or question. The President of the Senate, although he has regularly in person or by substitute appointed by the Senate, performed the Constitutional duty of opening the electoral votes, has never on any occasion, or in any single instance, attempted to go a step beyond that narrow and limited function."

Edward S. Corwin, commenting on the Disputed Election of 1876 states: "It was conceded by everybody that Mr. Hayes has 165 votes in the Electoral College and that Mr. Tilden has 184 votes, or one less than a majority of the College and so of the number necessary for a choice. The House at this time was in the control of the Democrats, the Senate of the Republicans. Although the latter set up the claim that the counting was to be done by the President of the Senate, that functionary discreetly declined to assume a power which none of his predecessors in office had ventured to assert. Custom at least had settled that the counting was to be done by the Houses, and by the Houses as separate entities and not as composing one joint assembly."¹³

¹³ CORWIN, *op. cit.*, p. 54. John Randolph Tucker, commenting on the same point has this to say: "This view was not only the clear meaning of the wording of the clause, but gained conclusive confirmation from the historic action of the two Houses, upon which the Twelfth Amendment had placed its sanction by the adoption of the precise words of the original article, which had been three times acted upon by the two Houses in accordance with this view. In none of the previous cases in 1793, 1797, or 1800 had the President of the Senate exercised any but the ministerial function of opening the certificates and laying them before the two Houses. Each House had appointed its one teller (or counter) to count the votes for it, and the result thus ascertained was reported by the tellers concurrently to the President of the Senate, who simply announced the result to the two Houses which had thus been obtained by and through their respective tellers. These precedents were regarded as interpretations of the constitutional language in the original Constitution; and as that language was precisely readopted in the Twelfth Amendment, the precedents were held to be an authentic construction of the language used in the original, and by the Constitution makers (the States) in ratifying the amendment." TUCKER, *op. cit.*, p. 703.

The significant question remains: Does the power to canvass the election returns and declare the results thereof carry with it the power to determine the validity or illegality of such returns? More briefly: Can Congress go behind the election returns? It is to be noted that the Constitution is silent in this regard. Whether Congress can go behind the election returns in the exercise of its power to canvass such returns was posed before Congress in 1949.

The Nacionalista Party, in the belief that the election of Messrs. Elpidio Quirino and Fernando Lopez were tainted by fraud and terrorism, directed a petition to the President of the Senate, seeking to defer the canvassing of the election returns to a subsequent date pending an inquiry into the charges of that party with respect to the validity or illegality of the 1949 elections.¹⁴ The Nacionalistas

¹⁴ Pertinent portions of the Nacionalista Protest as found in the Senate Journal for December 30, 1949, are as follows:

"The Nacionalista Party by its undersigned authorized representatives, respectfully manifests:

"2. That, in connection with your Honor's constitutional duty to canvass the election returns and proclaim the President-elect and Vice-President-elect of the Philippines, your Honor is called upon to consider the election returns coming from different precincts duly certified by the board of canvassers of each province or city;

"3. That, to the best of our information and belief, what were transmitted to your Honor by the board of canvassers of each province or city were not the election returns mentioned in the immediately preceding paragraph but merely statements on the basis of said returns made by said board of canvassers of each province or city;

"5. That, in the last general elections held on November 8, 1949, the system of block voting provided for in section 124 of the Revised Election Code (Republic Act 180), was adopted and that in pursuance thereof, an overwhelming number of supposed total votes cast were cast in favor of the political parties printed in the ballots;

"6. That, under said system of block voting adopted in the manner mentioned in the preceding paragraph, the votes having been cast *directly* in favor of the political parties and, therefore, *indirectly* only in favor of the candidates for President and Vice-President of the Philippines, any presidential or vice-presidential candidates could not have been elected by '*direct vote of the people*,' as required by the Constitution;

"7. That in the provinces of Cavite, Cebu, Lanao, Nueva Ecija, Nueva Vizcaya, Occidental Misamis, Oriental Misamis, Occidental Negros, Pampanga, Pangasinan, Sorsogon, Zambales, and in the 1st and 2nd districts of Bohol, 2nd, 4th, 5th district of Iloilo, 2nd district of Leyte, and the 2nd district of Tarlac, rampant frauds and widespread terrorism were employed by Liberal Party leaders, policemen, special policemen, and hired thugs to prevent known Nacionalista Electors from voting as they were in fact prevented to coerce Nacionalista Electors to vote for the Liberal Party, as they were in fact so coerced and to perform, as they did perform, other acts of intimidation as to defeat the free will of the Electors therein;

"8. That, as a consequence of the rampant frauds and widespread terrorism and intimidation committed in the manner specified in the immediately preceding paragraph, it would be impossible to determine the true President-elect and Vice-President-elect of the Philippines; and

"9. That, under the Constitution and existing laws, no protest is authorized in any specific manner in connection with the election for President and Vice-President of the Philippines;

were of the opinion that the power of canvassing election returns and declaring the results thereof carried with it the power of determining the validity or illegality of such returns. They were of the belief that the power of Congress in this regard was not ministerial. Congress could therefore in the exercise of this power, go behind the returns.¹⁵ The Liberals on the other hand maintained that such a power cannot be implied from the power to canvass election returns and declare the results thereof. Senator Emiliano Tirona of the Liberal Party, justifying the stand taken by that party, invoked the principle of "*expressio unius est exclusio alterius*" and said that when the Constitution provides the scope of the authority of Congress and defines the power of the Congress, any other power cannot be assumed, because by the inclusion of one power there is an exclusion of another power.¹⁶

"WHEREFORE, it is respectfully prayed that the canvassing of the election returns and proclamation of the President-elect and Vice-President-elect of the Philippines be deferred to a subsequent date pending:

"b. The determination of the votes *directly* cast in favor of the candidates for President and Vice-President of the Philippines, and to this effect, to order the board of canvassers for each municipality or city to review all the ballots cast in the last general elections with the view to disregarding votes cast in pursuance of the block voting provided by Section 124 of the Republic Act 180, and to transmit to the corresponding provincial board of canvassers a certified statement of its canvassing to such effect;

"c. Inquiry into the veracity of the truth of the allegations contained in paragraph seven of this complaint, and to this effect, a Special Committee composed of Members of Congress in such manner as may be deemed appropriate, be designated and authorized to receive evidence, to issue subpoena and subpoena duces tecum and be invested with such other authority as may be necessary to render its work effective; and to order said Committee to submit its findings and recommendations within two weeks from this date; and

"d. Upon an affirmative finding of the truth of the allegations contained in paragraph seven of this complaint, a declaration be made that there was a failure of election in the last general elections held on November 8, 1949.

"Manila, Philippines, December 12, 1949."

¹⁵ See: Senate Journal, December 30, 1949; January 3, 1950.

¹⁶ Senators Emiliano Tirona in answer to Senator Camilo Osias in a debate on the point, said: "So this sentence means that after counting the votes as appeared in the certificates, the President of the Senate shall declare who had obtained the highest number of votes for President and Vice-President. There is not any sentence which conveys the idea that both Houses of Congress or the President of the Senate himself, may look into the charges of frauds and anomalies supposedly committed in the elections. And, furthermore, I will read the last sentence; '. . . but in case two or more shall have an equal and the highest number of votes for either office, one of them shall be chosen President or Vice-President, as the case maybe, by a majority vote of the Member of the Congress in joint session assembled.' So that, according to this section, the only clear, express, and categorical authority given to the Congress in joint session is to decide the tie if there is a tie of votes for the position of President and Vice-President, and the Constitution is silent in regard other matters. Does not the distinguished gentleman from La Union believe in the principle that '*expressio unius est exclusio alterius*'? That when the Constitution provides the scope of the authority of Congress and defines the power of the Congress, we cannot assume

The issue was not squarely decided. The Liberals had control of the House. The plan of the Nacionalistas and the Avelino Liberals to wrest control of the Senate failed when Senator Avelino, upon promise of reinstatement and of being elected Senate head, urged his men to reunite with the Quirino Liberal Senators.¹⁷ The question as to the scope of the powers granted Congress as Board of Canvassers for presidential elections thus remains unsettled.

The theory advanced by the Nacionalistas seems to be the better view. It has been held in this jurisdiction, that when a department of the government is invested with a power or entrusted with a duty over a certain field, such power or duty as the case maybe is deemed to be discretionary and not ministerial.¹⁸ The presumption therefore, is that such power or duty was reposed in that body to be exercised or performed by his superior judgment, discretion, and sense of responsibility. Thus, the Supreme Court held in the case of *Severino v. Governor General*,¹⁹ that where a duty is developed upon the Governor-General rather than upon an inferior officer, it will be presumed to have been done because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discreet performance than could be relied upon if the duty were put upon an officer chosen for inferior duties. *Forbes v. Chuoco Tiaco and Crossfield*,²⁰ is authority for the view that the Governor-General had the power to deport obnoxious aliens and in the exercise of that power he may use such methods as his official judgment and good conscience may dictate. In *Concepcion v. Paredes*,²¹ the Supreme Court held that appointment to office is intrinsically an executive act involving the exercise of discretion. In *Abueva v. Wood*,²² it was stated that in the formation of the government, equal confidence was rightfully reposed in each department, to which appropriate and individual duties were assigned, and in the performance of those individual duties assigned to each department of the government, a discretion was given. In *Alejandro v.*

any other power because by the inclusion of one power there is an exclusion of another power. Does not the distinguished gentleman from La Union believe that this power to determine the legality or illegality of any election of the ground of frauds and anomalies is excluded because of this express provision that only in case there is a tie may both Houses of Congress in joint session decide that by declaring who is to be recognized as elected President and Vice-President?" Senate Journal, January 3, 1950, p. 57.

¹⁷ See: Manila Times, December 12, 13, 14, 1949.

¹⁸ *Severino v. Governor-General*, 16 Phil. 366; *Forbes v. Chuoco Tiaco and Crossfield*, 16 Phil. 534; *Concepcion v. Paredes*, 42 Phil. 599; *Abueva v. Wood*, 45 Phil. 612; *Alejandro v. Quezon*, 46 Phil. 83; *Vera v. Avelino*, 42 O. G. 3596. For United States Supreme Court cases on the same point, see the following:

Fong Yue Ting v. U. S., 149 U.S. 698; *Myers v. U.S.*, 272 U.S. 52; *Barry v. U.S.*, 279 U.S. 597.

¹⁹ 16 Phil 366.

²⁰ 16 Phil. 534.

²¹ 42 Phil. 599.

²² 45 Phil. 612.

Quezon,²³ it was announced that where a member has been expelled by the legislative body, the courts have no power irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement. *Vera v. Avelino*²⁴ ruled, that as the respondents exercised legislative functions, they were not subject to judicial supervision. Congress having been invested with the power of canvassing presidential elections, its power over that field should be held to be discretionary, and not ministerial. In the exercise of that power then, it should be assumed that Congress has all the powers to effectively perform the same.²⁵

It is a well-settled rule of constitutional construction that when a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred.²⁶ Among these auxiliary and subordinate powers that should be deemed included in the express power of Congress to canvass presidential elections, is the power to inquire and investigate into the validity or illegality of the election returns certified to it. To hold otherwise, would be to create and present grave problems. It would not be hard to think of a situation that would present a serious problem if the other view were to be adopted. Suppose that Congress is confronted with dual election returns from rival returning boards,²⁷ or better still, suppose that Congress is confronted with notoriously fraudulent returns,²⁸ would not Congress' hands be tied in the first case, and in the second case, would not Congress be violating the confidence reposed in it if it were to proceed and count the votes and declare the results thereof, notwithstanding the fact that the returns before it are notoriously fraudulent? Therefore, when such auxiliary powers are not expressly provided for by the Constitution, and when they are essential or necessary to the effective execution of some other and substantive authority expressly conferred, their existence should be implied.²⁹

It might be argued however, that inasmuch as the power of canvassing presidential election returns is foreign to the main legislative function of lawmaking, it should not be held to be possessed

²³ 46 Phil. 83.

²⁴ 42 O.G. 3597.

²⁵ *Government of the Philippine Islands v. Springer*, 50 Phil. 259; *Angara v. Electoral Commission*, 63 Phil. 139; *Vera v. Avelino*, see note 18, *supra*; *In Re Chapman*, 166 U.S. 661; *McGrain v. Daugherty*, 273 U.S. 135. *Reed v. County Com'rs. of Delaware County, Pa.*, 277 U.S. 376; *Barry v. U.S.* see note 18, *supra*.

²⁶ COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., Vol. I, pp. 138, 39.

²⁷ This problem was posed before the United States Congress by the Disputed Election of 1876.

²⁸ To many, this problem was presented by the presidential elections of 1949.

²⁹ *Government of the Philippine Islands v. Springer*, see note 25, *supra*. *Angara v. Electoral Commission*, see note 25, *supra*; *Vera v. Avelino*, see note 18, *supra*; *In Re Chapman*, see note 25, *supra*; *McGrain v. Daugherty*, see note 25, *supra*; *Reed v. County Com'rs of Delaware County, PA.*, see note 25, *supra*; *Barry v. U.S.*, see note 18, *supra*; *The Farmer's and Mechanics National Bank of Buffalo v. Daring*, 91 U.S. 197. *Marshall v. Gordon*, 243 U.S. 52. *Myers v. U.S.*, see note 18, *supra*; *Anderson v. Dunn*, 5 L. Ed. 242.

of the attributes incident to the power of legislation. It is true that, in the main, the function of Congress is that of legislating.³⁰ This is the authority to enact laws intended as rules of conduct governing the relations between individuals or between the individuals and the government.³¹ But the Constitution has likewise expressly vested in Congress certain other specific powers and duties which are not technically law making,³² like the power of impeachment,³³ the power to propose amendments,³⁴ and the power to act as a Board of Canvassers in the election of the President and the Vice-President of the Philippines.³⁵ These specific powers and duties were assigned to the legislative department of the government upon the theory that by reason of the machinery of government furnished to that department, they could be better and more efficiently performed by its superior judgment, discretion and sense of responsibility.³⁶ These are Congressional powers which are not strictly lawmaking because they do not lay down rules of conduct defining rights and duties of persons, but they nevertheless come within the orbit of the legislative authority of Congress.³⁷ Having been vested with such functions and prerogatives, it should be assumed that Congress has all the power to effectively perform and exercise them.³⁸

In American history, we find this question as to the scope of the power of Congress in canvassing presidential elections, posed before the United States Congress by the Disputed Election of 1876, which was previously referred to.³⁹ In the presidential election of 1876, as has been stated before, Messrs. Hayes and Tilden were the candidates for the Presidency. The election appeared at first to have resulted in a victory for Mr. Tilden, the Democratic candidate. An early tabulation gave him 184 votes, with but 185 votes necessary for election. Mr. Hayes, the Republican candidate, had put 165 votes. However, it soon appeared that Hayes had a chance to win. South Carolina, Florida, and Louisiana, with 19 electoral votes, emerged as disputed States. Conflict also developed in Oregon, where one Republican elector was ineligible because he was a federal officeholder.⁴⁰ Eventually, all four States submitted dual electoral re-

³⁰ Article VI, Sec. 1, Constitution of the Philippines.

³¹ SINCO, PHILIPPINE POLITICAL LAW, 2nd Rev. Ed., p. 196.

³² FERNANDO, POLITICAL LAW, Vol. I, pp. 406, 407.

³³ Article IX, Constitution of the Philippines.

³⁴ Article XV, Constitution of the Philippines.

³⁵ Article VII, Section 2, Constitution of the Philippines.

³⁶ See: *Abueva v. Wood*; see note 18, *supra*.

³⁷ See SINCO, *op. cit.*, pp. 196-221; FERNANDO, *op. cit.*, pp. 406, 407.

³⁸ *Government of the Philippine Islands v. Springer*, see note 25, *supra*; *Angara v. Electoral Commission*, see note 25, *supra*; *Vera v. Avelino*, see note 18, *supra*; *In re Chapman*, see note 25, *supra*; *McGrain v. Daugherty*, see note 25, *supra*; *Reed v. County Com'rs. of Delaware County, Pa.*, see note 25, *supra*; *Barry v. U.S.*, see note 25, *supra*.

³⁹ See note 10.

⁴⁰ "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or

turns to Congress. Unfortunately, there was no constitutional provision governing such a situation, nor was there any clear precedent for solving the problem. After some initial confusion, Congress decided to inquire and investigate as to which of the dual returns submitted to it by rival returning boards were entitled to be counted, and for this purpose created an Electoral Commission.⁴¹ The Electoral Commission, after inquiry and investigation, declared by a vote of 8 to 7 in each instance that the Republican electors had been properly certified and that their votes were therefore valid. Hayes was accordingly declared elected 185 votes to 184. On the strength of this precedent laid down by the United States Congress, support may be found to maintain the theory that the power of canvassing presidential elections involves the exercise of discretion, and includes the power of investigating and inquiring into the validity or illegality of the returns certified to it.

In view of the foregoing, it would seem reasonable to conclude, that Congress, in its role as Board of Canvassers for presidential elections was given discretion over the matter, and that therefore, it may inquire and investigate into the validity or illegality of the election returns certified to it whenever it finds it proper to do so.

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person holding an office of trust or profit under the United States shall be appointed an elector." Article II, Section 1, par. 2, Constitution of the United States.

⁴¹ "As constituted under the act, the Electoral Commission consisted of five members of the House chosen thereby, five senators chosen by the Senate; and five Justices of the Supreme Court, four of whom were designated in the act itself by reference to their circuits, while the fifth was to be chosen by these four. The House contingent comprised, naturally, three Democrats and two Republicans; the Senate Contingent comprised three Republicans and two Democrats; while the four justices designated by the act were divided equally as to earlier party affiliations. The fifth justice would therefore presumably be the pivotal member of the Commission; and it was originally supposed that this post would be filled by Justice David Davis from Illinois, whose political record was sufficiently ambiguous to suggest a fair possibility of impartiality, or at least the appearance of it. Justice Davis, however, 'loved his ease' and was little disposed to assume so arduous a role. When accordingly the Democrats of the Illinois Legislature, with singular maladroitness from the point of view of party advantage, elected him to a seat in the Senate, he quickly resigned his justiceship and took the preferred post. Thereupon, the judicial members turned to Justice Joseph P. Bradley of New Jersey as the remaining member of the Bench most likely to pursue an unbiased course." CORWIN, *op. cit.*, pp. 55, 56.