THE SUSPENSION OF THE WRIT OF HABEAS CORPUS: SUGGESTED AMENDMENTS

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There has been renewed agitation recently to amend our Constitution. Prominently mentioned as in need of amendment are the *habeas corpus* provisions.[1]

In a previous article[2] we traced the probable antecedents of these provisions. We suggested that the history of the provisions may prove relevant in considering amendments to the provisions. We now propose to consider whether the provisions should be amended at all; and if so, in what manner.

Basic in a discussion on this point is the question: Why should the privilege of the writ of habeas corpus be suspended at all? The utility of the writ in the preservation and protection of individual liberty has been repeatedly reiterated.[3] The writ may be equated with individual liberty. For by means of it, individual liberty is secured to the end that no person shall be deprived of it without due process of law. But if it be so valued and so incomparably important, why must it be suspended at all?

Justice Davis in *Ex Parte Milligan,*[4] answers the question, thus:

> "It is essential to the safety of every government that, in a great crisis, like the one we have just passed through, that there should be a power somewhere of suspending the writ of *habeas corpus*. In every war, there are men of previously good character, wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies; and their influence may lead to dangerous combinations. *In the emergency of the times, and immediate public investigation according to law may not be possible; and yet, the peril to the country may be too imminent to suffer such persons to go at large.* Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the person arrested in answer to a writ of habeas corpus." (Underscoring ours.)

And in *Ex Parte Zimmermann,*[5] the court said:

> "The civil courts are ill adapted to cope with an emergency of this kind. As a rule they proceed only upon formal charges. Their

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[1] Art. III, Sec. 1, Par. 14; Art. VII, Sec. 10, Par. 2.

[2] "Presidential Suspension of the Writ of Habeas Corpus in the Philippines; Its Antecedents," 31 PHIL. L. JOURNAL, No. 1, p. 138.

[3] Blackstone, *Commentaries* 129; Ex parte Stegman, 112 N. S. Eq. 22, 163 A. 422; Fraenkel, Our Civil Liberties 6 (1944)

[4] 4 Wall. 2 (1866)

[5] 132 F2d 442 (9th Cir. 1942), at 446

province is to determine questions of guilt or innocence of crimes already committed. In this respect their functions are punitive, not preventive; whereas the purpose of the detention of suspected persons in critical military areas in time of war is to forestall injury and to prevent the commission of acts helpful to the enemy."

Little can be added to these. The writ is suspended because of the unfortunate presence of certain persons whose continued freedom is a continuous and imminent, if not actual, threat to the security of the state, but whose detention can not, in view of conditions prevailing, be consummated in accordance with the ordinary and normal requirements of the law. A consideration of the factors giving rise to the two instances of writ suspension in the Philippines may further elucidate this point.[6]

The privilege of the writ of habeas corpus was suspended for the first time in the Philippines on January 31, 1905. The motivating or necessitating factors of the suspension are well stated in the order of suspension issued by the then Governor-General of the Philippines, Luke E. Wright, thus:

"WHEREAS, certain organized bands of ladrones exist in the Provinces of Cavite and Batangas who are levying forced contributions upon the people, who frequently require them, under compulsion, to join bands, and who kill or maim in the most barbarious manner those who fail to respond to their unlawful demands, and are therefore terrifying the law-abiding and inoffensive people of those provinces; and

"WHEREAS, these bands have in several instances attacked police and Constabulary detachments, and are in open insurrection against the constituted authorities, and it is believed that the said bands have numerous agents and confederates living within the municipalities of the said provinces; and

"WHEREAS, because of the foregoing conditions there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before the justices of the peace and other judicial officers:

"In the interest of public safety, it is hereby ordered that the writ of habeas corpus is from this date suspended in the Provinces of Cavite and Batangas." [7]

The "occasional" basis of the suspension appears to have been the existence of an open "insurrection" against the constituted authorities. And the insurrection was of such an extent that as a result, there existed "a state of insecurity and terrorism among the people which made it impossible in the ordinary way to conduct preliminary investigations before the justices of the peace and other judicial officers." [8]

[6] The first suspension was on Jan. 31, 1905 (Exec. Order No. 6). The second suspension was by Proc. No. 210, 46 O.G. 4682 (1950).
[7] Executive Order No. 6, Jan. 31, 1905.
[8] *See* Rule 108, Rules of Court.

The arrested and captured "ladrones" had to be detained to quell the insurrection and to prevent the further perpetration of banditry on the people. To legally detain them, certain legal requirements had to be satisfied. But conditions then existing did not permit compliance with such requirements. Hence, the suspension.

Without such suspension, the courts could have inquired into the legality of the detention of the captured "ladrones". And because the requisites of legal detention had not been complied with, the courts would have ordered them released. Released, they would have in all probability rejoined the insurrection being waged against the constituted authorities.

On October 22, 1950, the privilege of the writ of habeas corpus was again suspended in the Philippines. Again we quote the proclamation declaring the suspension:

> "WHEREAS, lawless elements of the country have committed overt acts of sedition, insurrection and rebellion for the purpose of overthrowing the duly constituted authorities and, in pursuance thereof, have created a state of lawlessness and disorder affecting public safety and the security of the state;
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> "WHEREAS, these acts of sedition, insurrection and rebellion consisting of armed raids, sorties and ambushes and the wanton acts of murder, rape, spoilage, looting, arson, planned destruction of public and private buildings, and attacks against civilian lives and properties, as reported by the Commanding General of the Armed Forces, have seriously endangered and still continue to endanger the public safety;
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> "WHEREAS, these acts of sedition, insurrection and rebellion have been perpetrated by various groups of persons well organized for concerted action and well armed with machine guns, rifles, pistols and other automatic weapons, by reason whereof there is actual danger of rebellion which may extend throughout the country;
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> "WHEREAS, 100 leading members of these lawless elements have been apprehended and presently under detention, and strong and convincing evidence has been found in their possession to show that they are engaged in rebellious, seditious and otherwise subversive acts as above set forth;
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> "WHEREAS, public safety requires that the immediate and effective action be taken to insure the peace and security of the population and to maintain the authority of the government;
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> "NOW, THEREFORE, I, ELPIDIO QUIRINO, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby suspend the privilege of the writ of habeas corpus for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of sedition, insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith."[9]

And in a statement issued in connection with the above suspension, the President said:

[9] Proc. No. 210, O.G. 4682 (1950).

> "This measure is calculated to facilitate the prosecution and final disposition of the increasing number of cases arising from the seditious, rebellious or otherwise subversive acts of the lawless elements to the end that normalcy maybe restored and the democratic way of life may be preserved for us and our children." [10]

A few days prior to the suspension of the writ, 105 alleged communists were rounded up in the city of Manila, including nine members of the National Secretariat of the local Communist Party. Voluminous documentary evidence was reported to have been seized.[11] Proof of a definite intention to forcibly overthrow the government was uncovered.[12]

To enable the prosecuting officials to investigate all those arrested, to give them time to sort and evaluate the evidence confiscated, and finally, to file the necessary informations, were admittedly the factors which required the suspension.[13] The courts were open. Charges had to be filed within six hours after the arrests.[14] But the number of those arrested, as well as the tremendous volume of the evidence seized rendered the filing of charges physically impossible. The legal requirements of continued detention could not then be complied with. Hence, the government could not afford to have the courts inquire into the cause of detention and thereafter order the release of those arrested. They constituted the heart of the communist movement in the Philippines. To risk their release in the hands of the courts was to risk the very life of the nation. Once released, they would have gone to the mountains to give vigor and strength to the communist movement which at that time was threatening the newly born Philippine Republic.

But whatever the proximate causes of the suspension may have been, the ultimate rationale of suspension seems to be the right of

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[10] 46 O.G.

[11] Decision of trial court in Politburo trials (People v. Lava, et al., Crim. Case No. 14071; People v. Magboo, et al., Crim. Case No. 14082; People v. Rodriguez, et al., Crim. Case No. 14270; People v. Mangila, et al., Crim. Case No. 14315; People v. Bueno, et al., Crim. Case No. 14344; at p. 3).

[12] The trial court's findings on the Politburo cases, *supra*, on this point, in part follow:

"After going over the voluminous documentary evidence introduced during the trial, the Court has come across documents showing that the purpose of the Communist Party of the Philippines is to overthrow the government of the Philippines by armed struggle. Quoted below are excerpts from some of the documents in evidence.

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" 'The Communist Party of the Philippines is leading the armed struggle for national liberation and the establishment of a new Democracy in order to crush the power of the exploiters, achieve power for the exploited classes, and exercise such power for their benefit, and for those who are disposed to accept the new society . . .'

(Exh. 0-119. 'Accounting for the Peoples'. Funds Received and Spent to Finance the Revolution. *See also* Exh. K-12(u), N-570-578, N-749-756. Document approved by SEC in its meeting on Feb. 15, 1950, Exh. 0-312, Par. 3).

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" 'In the Philippines the HMB, following communist leadership, shows the way. The Communist Party of the Philippines calls on the Filipino people everywhere to organize now guerilla and partisan groups and coordinate with the HMB in the decision struggle toward the inevitable and final armed overthrow of the imperialist and puppet war-mongers.' ('Annihilate the Imperialist . . .', *supra*)."

". . . it is incontestable that all of the defendants were imbued with the same purpose, which is to overthrow the present government and replace it with a government of their own, a Communist form of government patterned after that of the U.S.S.R. It is clear that a common feeling of resentment and grievances alienated all. A common plan evolved from their training as Communists." (At pp. 12, 14 and 66.)

[13] *See* individual opinions of Chief Justice Paras and Justice Tuason in the unpublished cases of Nava v. Gatmaitan, G.R. No. L-4855; Hernandez v. Montesa, G.R. No. L-4964; and Angeles v. Abaya, G.R. No. L-5102.

[14] Article 125, Revised Penal Code, now amended by Rep. Act Nos. 3940 and 1083 which extended the period of legal detention in crimes punishable by correctional and heavier penalties.

government to protect itself against those who would subvert or directly destroy its existence. It seems that however great and worthy the purposes of the writ of habeas corpus maybe, yet, on certain very grave occasions it stands on the way of the government's efforts to effectively and speedily protect itself. On such occasions, it's suspension has been deemed wise and necessary.

Indeed, to allow the suspension of the writ might mean the surrender of the right to liberty itself. It might mean placing in the hands of the president a potent weapon of dictatorship. But, as President Lincoln once said, in his own consummate mastery of prose, when his own suspension of the writ was being subjected to censure and criticism: "By general law, life and limb must be protected, yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb." [15] And as Sydney G. Fisher puts it, a little more bluntly perhaps:

> ". . . Every man thinks he has a right to live and every government thinks it has a right to live. Every man when driven to the wall by a murderous assailant will override all laws to protect himself, and this is called the great right of self-defense. So every government, when driven to the wall by a rebellion, will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law, but it is facts." [16]

Our Constitution has made writ suspension both fact and constitutional law.

Truly, liberty occupies a prime position in the scale of human values. Government is designed to preserve it. To preserve it, however, it must at times be curtailed. Writ suspesion is one, perhaps the greatest, of those times of curtailment. The point is to see to it that it is not anymore curtailed than is absolutely necessary. Safeguards must be provided so that its curtailment may not be utilized to serve personal or selfish ends.

To-date, we know of no move to amend the *habeas corpus* provisions of the Constitution so as to completely prevent the suspension of the writ on any occasion in the same manner that some state constitutions in the United States do.[17] Nor does there seem to be any

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[15] 2 Nicholay and Hay, *Abraham Lincoln Complete Works* 508.

[16] S. G. Fisher, "The Suspension of Habeas Corpus during the War of the Rebellion," 3 Pol. Sci. Q. 454, 484-485.

[17] Alabama: "That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this state." Art. 1, Sec. 17.

Arizona: "The privilege of the writ of habeas corpus shall not be suspended by the authorities of the state." Art. 2, Sec. 14.

Georgia: "The Writ of Habeas Corpus shall not be suspended." Art. 1, Par. 11.

Maryland: "The General Assembly shall pass no law suspending the privilege of the Writ of Habeas Corpus." Art. 3, Sec. 55.

Missouri: "That the privilege of the writ of habeas corpus shall never be suspended." Art. 1, Sec. 12.

North Carolina: "The privilege of the writ of habeas corpus shall not be suspended." Art. 1, Sec. 21.

Oklahoma: "The privilege of the writ of habeas corpus shall never be suspended by the authorities of this State." Art. 2, Sec. 10.

Texas: "The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual. Art. 1, Sec. 2.

Vermont: "The Writ of Habeas Corpus shall in no case be suspended. It shall be a writ issuable of right; and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefore." Sec. 33.

West Virginia: "The privilege of the writ of habeas corpus shall not be suspended. Art. III, Sec. 4.

move to change the provisions in as far as they determine the *occasions* for suspension. The move to amend appears to be directed on the *agency* vested with the power to suspend the writ.

As the law now stands in the Philippines, the President may, in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of *habeas corpus,* wherever during such period the necessity for such suspension shall exist.[18] And when the President suspends the privilege of the writ by virtue of the power thus conferred upon him, his determination as to the existence of invasion, insurrection, rebellion, or imminent danger of any of these events, and of the requirements of public safety, cannot be questioned before the courts.[19] His findings as to these contingencies are regarded as final and conclusive. It is probably in view of this, and in the light of our experience, that the move to suspend is directed with vigor on the agency vested with the power of suspension.

The power to suspend, standing alone, is not so great and tremendous a power. But that it resides in the same body vested with the power to arrest and detain, and that its exercise is not made subject to the usual restraints of judicial inquiry and determination, greatly amplifies the extent and scope of the power itself. It is magnified to such a degree as to render infinitesimal, if not nil, the effective value of all other rights.

Our government, like that of the United States, is a government of checks and balance. The three great departments, while separate, co-equal and independent of each other, are made to bear upon each other to check the excesses and abuses of each ather. But this power of suspension of the President, no matter how potent it may be, has been left in practical immunity from legislative or judicial "check". The practical demands of the occasions which can give rise to a suspension have been held to demand this immunity.

It is a well known fact that the privilege of the writ of the *habeas corpus* is an indispensable remedy for the effective protection of individual liberty. This is more so when the infringement arises from governmental action. When liberty is theratened or curtailed by private individuals, only a loud cry (in fact, it need not even be loud) need be made, and the government steps in to prevent the threatened infringement or to vindicate the consummated curtailment. The action is often swift and effective; the results generally satisfactory and gratifying. But when the government itself is the "culprit", the cry need be louder, for the action is invariably made under color of law or cloaked with the mantle of authority. The privilege of the writ, however, because it may be made to bear even upon governmental officers, assures that the individual's cry shall not, at least, be futile and vain. Thus, when the writ is suspended, this minimum assurance is taken away.

Arrests are made. Those arrested are detained in the quiet seclusion of police jails or army stockades. No charges are filed. Pro-

[18] Art. III, Sec. 1, Par. 14; Art. VII, Sec. 10, Par. 2, Constitution; Montenegro v. Castañeda, et al., 48 O.G. 3392 (1952).
[19] Barcelona v. Baker, 5 Phil. 87 (1905); Montenegro v. Castañeda, *supra.*

tests, after protests are made. Days, weeks, nay, months elapsed. But because the writ has been suspended, no judicial examination as to the legality of the arrests and detentions can be speedily undertaken.

When the writ continued to be suspended in the Philippines even after the back of the communists had been broken, there were not few who not only gravely doubted the justifiability of the continued suspension, but who attributed, perhaps unkindly, evil motives to the administration. National elections were to be held on November 10, 1953, but the writ continued to be suspended. Widespread was the belief that the administration could not win in a clean and honest election. Thus, many were those who concluded that to assure victory in the elections, the administration intended to arrest the leaders of the opposition party on the pretext that they were communists. And because the writ had been suspended, it would be impossible to obtain their release until after the elections, by which time it would be too late.

That the government was in possession of evidence indicating the communistic activities of some opposition leaders was openly intimated by a high ranking government official. The arrests were never made however. The elections turned out to be relatively clean and honest. The oppostion won by a landslide.

We have no competence to determine whether President Quirino really contemplated the arrests of the opposition leaders, whether the veiled threats made by a cabinet member were made with his knowledge and consent, or if that be so, whether his change of heart was persuaded by an angered public opinion. But, it may well be said, that the events clearly demonstrated the potent strength in the power to suspend the writ as it stands in the Philippine law and that it vests in the President, apparently legal and constitutional means to perpetuate himself in power. That the means provided assume legal and constitutional color is important in that it is not attractive to seize government by force alone, as it is to do it seemingly within the framework of the Constitution.

Yet, as previously indicated, the writ, must at times, be suspended to safeguard the security of the state. But, while it must be suspended, we agree with many that a change in the means and method of suspension must be made if a maximum protection to the liberty of the individual will at the same time be secured. Several propositions have been suggested, namely:

1. Vest the power in the President, the exercise of which, however, shall be subject to judicial inquiry;

2. Vest the power in the President and on Congress jointly;

3. Vest the power on the Congress alone;

4. Give the President power to suspend the writ temporarily, requiring congressional confirmation of the suspension within a prescribed period, and, in the absence of such confirmation, the suspension shall lapse;

5. Give the President power to suspend the writ, subjecting the suspension, however, to legislative termination; and requiring the President to call Congress immediately to a special session if not in session at the time of suspension.

In adopting a change, the primary considerations should be (1) the possibility of abuse; (2) the fact that the writ need generally be suspended speedily if it is to be effective; and (3) that secrecy both as to an intended suspension and as to the facts requiring a suspension may generally be necessary.

The above factors considered separately may best be served by different means. To provide against abuse a combination of the second and first propositions appears to be the best. All three departments would have a say, and therefore, to that extent, a greater protection against abuse would be obtained. To serve the second and third factors, a preservation of the present system of Presidential suspension would be the best. Our inquiry then is: How can all these factors of abuse, speed, and secrecy be served to the greatest extent possible? Since the privilege of *habeas corpus* must be suspended on certain occasions, how and by whom should the suspension be undertaken so that there would be no more infringement of individual liberty as is necessary without at the same time impairing the end and purpose sought to be attained by the suspension?

Compromise solutions often prove to be both unhappy and inadequate. But, however, averse one may be to compromise solutions, they are the only solutions available for the service of divergent requirements. Such is the case with the problem at hand.

We would reject the first proposition for the reasons stated by the courts in refusing to inquire into the findings of the executive as to the existence of invasion, insurrection, rebellion, or imminent danger thereof, and that public safety requires the suspension. We quote what our Supreme Court said in Barcelon vs. Baker:[20]

> "If the investigation and findings of the President, or the Governor-General with the approval of the Philippine Commission, are not conclusive and final as against the judicial department of the Government, then every officer whose duty it is to maintain order and protect the lives and property of the people may refuse to act, and apply to the judicial department of the Government for another investigation and conclusion concerning the same conditions, to the end that they may be protected against civil actions resulting from illegal acts.
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> ". . . suppose someone, who has been arrested in the district upon the ground that his detention would assist in restoring order and in repelling the invasion, applies for the writ of habeas corpus, alleging that no invasion actually exists; may the judicial department of the Government call the officers actually engaged in the field before it and away from their posts of duty for the purpose of explaining and furnishing proof to it concerning the existence or non-

[20] 5 Phil. 87, 93, 94, 96 (1905).

> existence of the facts proclaimed to exist by the legislative, and executive branches of the States? If so, then the courts may effectively tie the hands of the executive, whose special duty it is to enforce the laws and maintain order, until the invaders have actually accomplished their purpose.
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> ". . . The executive branch of the Government, through its numerous branches of the civil and military, ramifies every portion of the Archipelago, and is enabled thereby to obtain information from every quarter and corner of the State. Can the judicial department of the Government, with its very limited machinery for the purpose of investigating general conditions, be any more sure of ascertaining the true conditions throughout the Archipelago, or in any particular district, than the other branches of the Government? We think not."

The second proposition seems to be the most popular. This is due to the fact that our most recent experience on the suspension of the privilege impressed more on the public mind the possibility of abuse rather than the ends which a suspension is intended to serve.

But while joint executive and legislative action may solve the problem of abuse well enough, speed and secrecy, which are essential to an effective suspension, will have to be sacrificed. Writ suspension is an emergency measure, and emergencies too often arise without warning. The privilege of the writ, it must be recalled, may only be suspended in cases of actual invasion, insurrection, rebellion, or imminent danger thereof. When these contingencies arise, and there is a need for suspension to protect the public safety, the suspension must be immediate and it must come without warning.

By its nature, legislative process is slow and cumbersome, not too slow or too cumbersome for ordinary legislation probably, but we believe too slow to be able to effectively meet a rebellion or invasion not previously contemplated. And not only is the process too often subjected to unnecessary bickering and accompanied with too much speech-making, but aside from this, it should be noted that Congress is not always in session.

As such, to vest the power of suspension jointly on the President and Congress might frustrate the ends and purposes of suspension. *While the possibility of abuse is really a matter of grave concern, and while safeguards must be taken, the power to suspend the privilege of the writ should not be so emasculated or subjected to requirements which may prevent its effective exercise.* Otherwise, it maybe more advisable to completely prevent the suspension of the writ. It would be unfortunate if in endeavoring to prevent the abuse of the power to suspend the privilege of the writ, we should actually destroy the power itself without admitting that we have done so formally.

The third proposition given, that is, of vesting the power of suspension on Congress alone is unsatisfactory for the same reasons given above.

The fourth and fifth propositions suggested are similar in nature. Both allow the suspension of the privilege of the writ by the President solely, and both provide for the termination of the suspension by legislative action or inaction. Under the fourth proposition, however, while the suspension becomes effective immediately, it shall automatically lapse unless congressional confirmation is obtained within a prescribed period. Under the fifth proposition, the suspension also becomes effective immediately, and continues to be effective unless terminated by either the President himself or Congress. And in order that the Congressional power to terminate the suspension may not be rendered illusory, the President shall be required to call a special session of Congress immediately, or in case of failure to do so, allowing one-third of the members of Congress to convene a session.

Both propositions are, we believe, satisfactory, although the fourth seems to provide a better protection against abuse since the suspension terminates automatically in the absence of legislative action in the form of a confirmation. On the other hand, the fifth proposition would require positive legislatiev action which should prove more difficult to obtain than simple legislative inaction.

Under both propositions, however, the need for speed, and at least, maximum initial secrecy, are satisfied by giving the President power, acting alone, to suspend the writ. The speed and the secrecy, and hence, the effectiveness under which the power to suspend the privilege of the writ maybe effected under the present provisions of our Constitution, are preserved. At the same time, the possibility of abuse is greatly minimized by withdrawing from the President the sole power and authority of terminating the suspension, and hence, the power and authority of indefinitely continuing the suspension. Furthermore, in view of the nature of legislative participation, the consideration and possible enactment of remedial measures which could take the place of writ suspension maybe more speedily obtained.

Take the last instance of the suspension of the writ in the Philippines. Strong public criticism was really largely directed against the *continued* suspension of the writ rather than at its initial suspension. The avowed purpose of the suspension was to give time to the prosecuting officials to evaluate the voluminous evidence confiscated, and in the light thereof, to file the proper charges against those who were arrested and detained. The number of persons arrested and the amount of evidence that had to be evaluated probably prevented the filing of the appropriate informations within the period required by law. As such, those detained for acts and conspiracies affecting the security of the state, might have obtained their release through the writ of *habeas corpus* were it not for the suspension of the privilege of the writ. But the trouble was that the suspension continued even after the appropriate informations had been filed. Had Congress the authority to terminate the suspension, what was believed to have been an abuse of the power could have been curtailed. Congress also could have, concurrently with the termination, passed a law extending the period of legal detention provided under

Article 125 of the Revised Penal Code to such period as may have been necessary for the filing of the proper informations.

Propositions other than those we have enumerated above have also been suggested. We refer to those which involve judicial, or Supreme Court participation, in effecting a suspension of the privilege of the writ. We feel, however, that it would be unwise to require judicial participation in suspending the writ. The power involved is far from being judicial in nature. Furthermore, cases involving the validity, extent, and effect of the suspension may eventually be brought before the courts. If the courts, or the Supreme Court in particular,had a hand in effecting the suspension, it might not only be embarrassing, but also demoralizing, for the same court to decide the validity of the suspension.

In the previous article we have written on the suspension of the privilege of the writ of *habeas corpus,* we inquired thus: "Needed to secure a colony, they (the Constitutional provision on *habeas corpus*) were deemed fit to secure a republic. Have they?" Apparently, considering the nature of the reforms suggested, the feeling is that the writ provisions of the Constitution have served the security of our republic well, but far too adequately that they may be utilized to destroy the individual liberties for which the republic stands. In endeavoring, however, to amend the provisions of our Constitution on the suspension of the privilege of the writ to see to it that the power to suspend is not utilized to destroy individual liberty, we should take care not to destroy the power to suspend by rendering it impotent and useless. Otherwise, it maybe wiser to abolish and abrogate the power itself.