PARLIAMENTARY FREEDOM OF SPEECH

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"There is nothing so necessary as free speech, and without it (it) is a scorn and mockery to call it a Parliament House."

—Paul Wentworth in an address before Commons in 1576.

I. INTRODUCTION

In England the concept of parliamentary privilege comprises the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Parliament, and by the members of each House individually, without which they could not discharge their function, and which exceed those possessed by other bodies or individuals.[1] In countries having Legislative Assemblies which do not perform judicial functions, parliamentary privilege refers to all the rights and immunities, both of the members, individually, and of the assembly in its collective capacity without which said members and/or assembly could not properly discharge legislative powers and duties.[2] In today's parlance, however, the term "parliamentary privilege" is ordinarily understood to mean freedom of speech or debate in Parliament or Legislature, and freedom from arrest and molestation of the members thereof while performing their legislative functions.[3] Of these, freedom of speech is the most essential, and no legislative assembly can exist and effectively discharge its constitutional or inherent sovereign powers as an organ of the State without it. It is so inherent in every *free* council or legislature and "there could be no assured government by the people, or any part of the people, unless their representatives had unquestioned possession of the privilege."[4] The fundamental reason underlying this parliamentary liberty of speech has been explicity expressed, thus:

> "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence."[5]

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[1] MAY'S TREATISE ON THE LAW, PRIVILEGES PROCEEDINGS AND USAGE OF PARLIAMENT 40 (15th ed. 1950).

[2] CUSHINGS, LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES 215-217 (9th ed. 1899).

[3] Wittke, *The History of the English Parliamentary Privilege*, 26 THE OHIO STATE UNIVERSITY BULLETIN 2, 14 (August 30, 1921).

[4] MAY'S TREATISE, *op. cit. supra* note 1, at 46.

[5] 2 WORKS OF JAMES WILSON 38 (Andrews ed. 1896).

> "These privileges are thus secured, not with the intention of protecting the members against prosecution for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal."[6]

Parliamentary freedom of speech is almost universally recognized. The privilege is the most powerful and effective attribute enjoyed by a member of a legislative assembly or deliberative body. Justice Story has so pronounced that "The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual."[7] The ideal use to which perfect and complete freedom of debate can be put, is when it brings forth intelligent and rational, as well as searching and critical analysis, plus relevant and pertinent information as may be valuable in any matter being dealt with by the legislative branch of the government.[8] But the privilege may also be susceptible to emasculation, curtailment if not total denial. A strong executive can impair or render it impotent by imposing his wishes upon, or dictating his intentions to, the legislature or the members thereof. Vested interests or powerful groups of persons with common aims, in or outside the legislature itself, can corrupt the use of the privilege in order to suppress information or contrary opinion expressed against them. On the other hand, the absolute immunity that the privilege carries constitutes a wide door to allow abuse in the exercise thereof. Occasions are many whereby it has been made a vehicle to vilify or assassinate the character or reputation of another. And even with obvious malice and evil motive, its victim has no armor of protection and no legal assistance can be extended by our courts. The boundaries of the areas whereby the privilege of parliamentary speech and debate should be appropriately used, where it can be eroded to defeat the legitimate rights of the people, and where it can be, as it has been, ill-used, are attempted to be briefly surveyed in this discourse.

II. HISTORICAL BACKGROUND

It was under the Lancastrian kings that privileges of parliament first began to attract attention.[9] The parliamentary struggles in England during the Sixteenth and Seventeenth Centuries gave historic

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[6] Coffin v. Coffin, 4 Miss. 1, 27 (1808); 2 COOLEY'S CONSTITUTIONAL LIMITATIONS 930 (8th ed. 1927).

[7] COMMENTARIES ON THE CONSTITUTION sec. 866 (5th ed.).

[8] See Oliver P. Field, *The Constitutional Privileges of Legislators*, 9 MINN. LAW REV. 442.

[9] TASSWELL-LANGMEAD, ENGLISH CONSTITUTIONAL HISTORY 216 (10th ed 1946).

setting to legislative proceedings from which parliamentary privileges began and developed until fully recognized and confirmed. The theory was that the House of Commons possessed ancient rights and privileges derived from the law and custom of Parliament while others have been defined by statute, and it was upon these grounds alone that all privileges whatever were justified.[10] At the opening of every Parliament it was customary for the Speaker, in the name and on behalf of the House of Commons, to make a claim by humble petition to their ancient and undoubted rights and privileges, particularly freedom from arrest and all molestations; liberty of speech in all their debates and proceedings; admittance or access to the royal presence whenever occasion shall require; and favorable construction upon all their proceedings.[11] To this petition the Lord Chancellor would readily reply and confirm all the rights and privileges which have ever been granted to and conferred upon the Commons by the King or any of his royal predecessors.[12] This manner and procedure of claiming privileges developed gradually and has been continued to modern times; but now, it has become a mere formality and part of the customary ceremonial at the commencement of each new Parliament.

As regards parliamentary freedom of speech, according to Elsynge, the first Speaker's petition recorded was in the year 1541,[13] although this does not necessarily imply that it has never been claimed before. Ordinarily the Lord Keeper's reply to the petition for free speech was in general terms like the petition itself. Nonreliance of this indefinite response soon pervaded and as a consequence the demand for a specific definition of the scope of free speech was first voiced in 1566 by Paul Wentworth.[14] In the same year, however, the prayer for liberty of speech was omitted together with freedom from arrest by the newly elected speaker Onslow.[15] Hence, the refusal of members of the House to honor vague and general promises became more vigorous, and the demand for a more positive and clear construction of the privilege persisted until and during the reign of Elizabeth,[16] culminating into a perfectly clear guarantee in 1593 by the Lord Chancellor's speech, thus:

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[10] MAY'S TREATISE, *op. cit. supra* note 4, at 42.

[11] *Id.* at 43; 5 PARLIAMENTARY HISTORY 512; 2 PROCEEDINGS OF COMMONS 359 (1620-1621).

[12] MAY'S TREATISE, *id.* at 43; JOURNALS OF THE HOUSE OF LORDS 571 (1841), 8 (1847-1848), 18 (1906), 9 (1911).

[13] ELSYNGE, THE MANNER OF HOLDING PARLIAMENTS 176 (1768).

[14] NEALE, FREE SPEECH IN PARLIAMENT 278 (Tudor Studies ed. by R. W. Seton-Watson 1924).

[15] 2 HATSELL, PRECEDENTS OF PROCEEDINGS IN THE HOUSE OF COMMONS, 225.

[16] ELSYNGE, *op. cit. supra* note 13.

> "For libertie of speech, her majestie commanundeth me to tell yow, that saye yea or no to Bills, god forbid that any man should be restrained, or afraide to answer accordinge to his best likinge, with some shorte declaration of his reason therin, and thein to haue a fre voyce, which is the verye trew libertie of the house." [17]

But in 1672, Speaker Charlton who was elected due to an unexpected vacancy, returned to the old generalities of praying for all the privileges.[18] Moreover, in March, 1694, Speaker Foley followed the precedent of Mr. Onslow in 1566 by praying only his excuses for his own faults and mistakes, deliberately omitting all the privileges pursuant to directions he received from the House of Commons the day before.[19] Nevertheless, in the course of time, parliamentary freedom of speech became an "undoubted right" and a brief survey of the cases during this era will illustrate how it was fully recognized as such.

The case of Thomas Haxey which occurred during the reign of Richard II was the first involving parliamentary freedom of speech. Haxey had been a King's clerk since 1382 and a minor member of the clergy. He was reported to have authored a bill sent by the House of Commons to the House of Lords complaining about sheriffs being kept in office more than a year, peace not being well kept during the Scottish march, abuse of livery and maintenance, and other items reflecting upon the king's extravagance. This bill aroused the anger of Richard and he demanded from the Commons the name of the person who was responsible for the measure proferring offense and insult to the Crown and his household. Either through the House of Lords or through the Speaker of the House of Commons, Richard was able to identify Haxey as the person. Hence, Richard succeeded in having Haxey tried in Parliament which found him guilty and sentenced him to die as a traitor.[20] Subsequently, the conviction of Haxey was annulled by Richard at the behest of Richard's Archbishop. When Henry IV succeeded Richard in 1399, Haxey petitioned the king in Parliament to reverse the judgment against him as being against the law and custom which had been existing before in Parliament, and the petition was granted.[21] In the same year, the House of Commons as a body, formally petitioned the King for the annulment of the judgment based on the theory that it was rendered erroneously and in derogation of the privileges of the House of Com-

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[17] 31 ENGLISH HISTORICAL REVIEW 136.

[18] ELSYNGE, *op. cit.*

[19] HATSELL, *op. cit., supra* note 15 at 225-226.

[20] ELSYNGE, *op. cit.* at 176-178; 4 OMAN, POLITICAL HISTORY OF ENGLAND 132-140 (1906).

[21] 3 ROTULI PARLIAMENTORUM 430; STUBBS, CONSTITUTIONAL HISTORY OF ENGLAND sec. 774; ELSYNGE, *op. cit.* at 179-180.

mons, and that the whole procedure which had been followed, was contrary to the usual procedure in Parliament. The Commons also demanded the release and restoration of Haxey's estate which was forfeited. The King assented to these demands and the entire proceedings against Haxey were annulled and declared to be of no effect.[22] According to two writers, the outcome of the Haxey case constituted a victory for the Commons because in effect, it succeeded in having legislative immunity for words spoken in Parliament recognized.[23] But two other authors who do not give such weight and consideration to this case, seem to be of the opinion that it did not prove the existence of the privilege of free speech because Haxey was not a member of the House and his release was based upon his status as a clergyman.[24] The real importance of the case however, lies not in the year 1399 but in the seventeenth century when parliamentarians cited it effectively as a historical precedent in the controversies that arose during this period involving the same privilege.[25]

The problem during this era was the existence of groups of informers who made it their trade to relay information to the King regarding the deliberations in the House. The abuses of these groups made possible for the king to know the arguments *pro* and *con* of the individual members of Parliament and identify in advance those against him on matters before them and pending official action. In 1400 the Commons protested to Henry IV against this surreptitious transmission of information and petitioned him not to rely on reports except those that are officially communicated to him by the House. Henry IV complied with this request and promised not to listen in the future to unauthorized accounts of the discussions in the Commons.[26] In 1451 however, Thomas Young, a member for Bristol, proposed in the House of Commons that the Duke of York should be declared heir to the crown. This matter was again brought to the knowledge of Henry IV and for this he sent Young to the Tower. In 1455 however, Young petitioned the Commons to obtain compensation for losses suffered by his estate and for personal injuries received during his incarceration. Young's petition was based upon the old freedoms and privileges of members of Commons to speak and say in the House their opinions without being charged or punished there-

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[22] 3 ROTULI, *id.* at 434.

[23] Veeder, *Absolute Immunity in Defamation: Legislative and Executive Proceedings*, 10 COL. LAW REV. 131 (1910); Wittke, *op. cit., supra* note 3 at 24.

[24] CLARKE, PARLIAMENTARY PRIVILEGE IN THE AMERICAN COLONIES 93-94 (1943); NEALE *op. cit., supra* note 14 at 259.

[25] TASSWELL-LANGMEAD, *op. cit., supra* note 9 at 217.

[26] 3 ROTULI, *op. cit., supra* note 21 at 456.

for.[27] And although the petition of Young was treated as private and thereby implying no violation of the collective privilege of the House, it was sent to the Lords and the King directed them to make reparation as pleaded for and according to their discretion.[28]

In 1512 Richard Strode, a member of the House of Commons introduced in Parliament certain bills to regulate certain practices tainted with abuses in connection with the tin industry in Cornwall. These bills were offensive to Henry VIII; and those who thought that their interest were being prejudiced by Strode's activities, caused Strode to be prosecuted in the Stannery Court,[29] which imposed upon him a heavy fine and an imprisonment in Lidford Castle, until he was released by a writ of privilege.[30] This extra-ordinary sentence rendered against one of its members prompted Parliament to pass an act annulling and voiding the proceedings against Strode in the Stannery Court and further declared that:

> "All suits, condemnations, executions, fine, amerciaments, punishments, connections, grants, charge, and impositions, put or had, or hereafter to be put or had, upon the said Richard, and to every other person or persons afore specified, that now be of this present Parliament, or that of any Parliament, thereafter shall be, for any Bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed and treated or, be utterly void and of none effect." [31]

Above-quoted Act of Parliament was the first definite declaration guaranteeing parliamentary freedom of speech. Although it declared invalid proceedings which had already taken place, the act was also clearly intended to have a prospective application in protecting members of either House from any prosecution or charge on account of their speeches or votes in Parliament.[32]

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[27] Young's petition invoked "the old liberte and fredom of the Comyns of this lande, had, enjoyed, and prescribed from the tyme that no mynde is . . . to speke and say in the House of their assemble, as to theym is thought convenient or reasonable without any manner chalenge, charge or punycion." 5 ROTULI PARLIAMENTORUM 337.

[28] 5 ROTULI 357.

[29] HATSELL, *op. cit., supra* note 15, at 85; 4 PARLIAMENTARY HISTORY 85; ANSON, THE LAW AND CUSTOM OF THE CONSTITUTION 167 (1922); TASSWELL AND LANGMEAD, ENGLISH CONSTITUTIONAL HISTORY 286 (1929).

[30] The court for the Stannaries of Cornwall and Deom is a court of special jurisdiction for the lord redress of private wrongs. Similar courts of the same character were constituted in derogation from the general jurisdiction of the courts of common law. 1 HOLDSWORTH, HISTORY OF ENGLISH LAW 151-165; G. R. *The Stannaries*, 3 HARVARD ECONOMIC STUDIES.

[31] HATSELL, *op. cit., supra* note 15, at 86; Statute of Westminister 4 Hen. 8, c. 8 (1512).

[32] HATSELL, *ibid.*; MAY'S TREATISE, *op. cit., supra* note 1, at 48.

Intense clashes and rivalries however between the Tudor and Stuart Kings on the one hand, and the Parliament on the other, persisted and continued during the decades that followed over the proper interpretation of the privilege of freedom of speech. During this regime, the exercise of the legislative freedom of speech by the Lords or members of the Commons largely depended upon the prestige, strength or weakness of the personality of the King or the individual members and officers of Parliament.[33] Elizabeth during her reign was a Queen who was resolute and firm in safeguarding her prerogatives and would not tolerate meddling by the Commons in matters affecting succession and religion. Commons seemed at first to have catered to her wishes, but in 1558 the Commons began petitioning the Queen on the subject of her marriage and succession. No serious conflict arose as a result of these early entreaties, but in 1566, a joint committee of Parliament presented a resolution dealing with the subject of succession which Elizabeth merely ignored. Her attitude invited bold speeches by Dutton, Wentworth and several other members of the Commons which deeply offended the Queen and made her resolve to revenge her detractors. She summoned a number of Lords and thirty Commoners before her and with a mixture of her authority and feminine wiles, she reached an understanding with them that further discussion on these matters would be prohibited.[34] The duration of this understanding was however temporary. Paul Wentworth began to revive the question whether such inhibitions of the Queen were not against the privileges of the House. Debates that followed centered on this raging issue and although Elizabeth summoned the Speaker, she failed to stop the deliberations until she finally yielded by revoking her orders, coupled however with a request that the House set aside any further deliberation on said matters.[35] But again when Parliament convened in 1571, Wentworth revived the question of preserving the rights and privileges of the House against interferences from the Crown. On the same occasion, the Commons received a report that one of its members, Mr. Strickland, was brought before the Queen's Council and was prevented from attending Parliament because he moved for the reformation of the Common Prayer Book. The Commons was furious about this action of the Queen and it strongly demanded observance of, and respect for, their privileges. The Queen yielded and allowed Strickland to go to Parliament the next day, but Elizabeth seized this as an occasion for severely criticising the members of Commons for not doing their job and for

[33] Oppenheim, *Congressional Free Speech*, 8 LOYOLA LAW REVIEW, Nos. 1 & 2, 8-9.

[34] 1 COBBETT, PARLIAMENTARY HISTORY, 661-664, 695.

[35] *Id.* at 716.

wasting their time making long speeches.[36] In 1575, the Queen upon learning that the House of Commons deliberated on the matter of Church ceremonies and rites, ordered them not to interfere in religious affairs.[37] Provoked by this interference, Peter Wentworth delivered a long speech reciting the many violations of the liberties and privileges of Parliament by the Crown. He denounced the Queen's practice of sending messages and commands to the House of Commons inhibiting them to discuss certain matters that reach her ears through gossips and rumors. He labelled these directives as flagrant transgressions of the fundamental rights of the Commons. But in the course of one of his scathing addresses, he was seized and placed under the Serjeant's custody, subsequently examined by a House Committee, and then imprisoned in the Tower as a result thereof.[38] After being confined for over a month, Wentworth was released upon pardon extended by the Queen; but in 1587, he reopened the issue concerning the privileges of the House. He submitted a list of infractions to the Speaker who in turn gave the same to the Privy Councillor and after investigation, Wentworth was recommited to the Tower. After his release, he together with Bromby presented in the 1592 session of Parliament a petition concerning succession for which they were again investigated by the Council and received imprisonment penalties, this time for an indefinite period of time.[39] During this same session, the Commons debated on a bill dealing with the abuses and practices of ecclessiastical courts. The proceedings were again reported to the Queen by unscrupulous agents. Hence, she summoned the Speaker and she ordered the House to stop meddling in matters of state or church and in compliance with her directive, the bill was quashed and its author sentenced to prison.[40] These events illustrate how domineering was the personality of Elizabeth and how infirm on numerous occasions were the members of the Commons in repulsing her impositions that manifestly violated their ancient and undoubted rights already secured and guaranteed by the Act of Parliament enacted in 1512.[41]

The turning point as to whether parliamentary freedom of speech would triumph over the King's attempt to suppress the privilege, was reached during the reign of James I. In 1621 the matter of the Spanish marriage and the affairs of the Palatinate were brought before and discussed in the House. James I resented the deliberations on these subjects and immediately dispatched a com-

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[36] *Id.* at 766-767.
[37] *Id.* at 781.
[38] *Id.* at 785-786, 793-802.
[39] *Id.* at 851-853, 870.
[40] *Id.* at 889.
[41] Statute of Westminister, *op. cit., supra* note 31.

munication to the Speaker ordering the Commons to stop and threatening to punish any member of Parliament during the session or even after if he should be ignored.[42] A committee took up this protest of James and a reply was formulated requesting him not to give credence to unofficial reports and rectifying the King's wrong impressions as to the true nature of business pending before it. James I feeling slighted by the communication, countered that he was an experienced ruler who needed no lessons or suggestions from the members of the House. He vigorously maintained in his message to Commons that it was completely erroneous and shameful for Commons to claim ancient rights and privileges because said privileges were derived only from the grace and permission of the king and his ancestors, and were allowed merely by tolerance. He admonished that as long as Parliament would act within the bounds of its duty, he would be careful in maintaining and preserving the liberties and privileges of Parliament as had been allowed and tolerated by his predecessors and in preserving at the same time his own royal prerogatives.[43] This message of James I stirred the attention of Commons and the members thereof openly disagreed with the king's position. It lead Commons to issue a formal petition to James I insisting that the privilege of freedom of speech belongs to it as of right and by inheritance. Sir Edward Coke, the lord keeper, strongly supported the petition of the House. But while this matter was under study by a committee, a letter with a conciliatory tone was received from James I by the House which contained also assurance that he would preserve the ancient privileges of the House. When this attitude was again implicit in another communication, the House drew up a manifestation of thanks to the king. Subsequently, however, the committee which investigated the petition submitted a report which was entered into the journal reaffirming that the privilege of freedom of speech was "the ancient and undoubted birthright and inheritance of the subjects of England." When James I learned of this proceedings, he became so mad and had the journal of the House brought to him, and in the heat of his anger tore the entry with his own hands. Before his Council and his judges, he declared the protestation of the House invalid, annulled, void and of no effect. Immediately, he issued an order dissolving the Parliament and effected punitive action against the members of the committee by sending them to the Tower.[44]

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[42] COBBETT, *op. cit., supra* note 34, at 1301, 1326.
[43] *Id.* at 1344.
[44] *Id.* at 1331-1362; GARDINER, HISTORY OF ENGLAND 261 (1896).

The last occasion in which the privilege of freedom of speech was directly impeached was in the celebrated case of Sir John Eliot, Denzil Hollis, and Behamin Valentine. These three members of Parliament delivered speeches which Charles I considered to be dangerous, libelous and seditious.[45] And when the King announced that he would dissolve Parliament, Sir Eliot opposed him. After the dissolution of Parliament, Charles I ordered the arrest of Sir Eliot, Hollis, and Valentine and they were prosecuted before the Court of King's Bench. The accused maintained that the court had no jurisdiction because words spoken in Parliament cannot be questioned by an inferior court and that the offense if any had been committed, was punishable only in Parliament. They likewise invoked the Act of 1512 in support of their contention, but the Court of the King's Bench held that the Act cited was a private act applicable only to Richard Strode.[46] The decision of the Court in this case was very unpopular and contributed greatly to the growing opposition against Charles' reign.[47] In 1641, the House of Commons boldly resolved that all the proceedings in the King's Bench were against the law and privilege of Parliament.[48] This act corrected the erroneous assumption that the Act of 1512 had been simply a private statute for the relief of Strode and had no general and prospective operation. And to forestall all probability of trouble in the future, the House of Commons adopted a Resolution in November, 1667, worded as follows:

> "That the Act of Parliament in the 4th Henry VIII, commonly entitled 'An Act concerning Richard Strode', is a general law, extending to all members of both House of Parliament; 'and is a declaratory law of the ancient and necessary rights and privileges of Parliament.'" [49]

In the same month the House of Commons declared that the decision rendered against Sir John Eliot, Denzil Hollis and Benjamin Valentine by the Court of the King's Bench, was an illegal judgment and against the prerogatives and privileges of Parliament.[50]

After the Revolution of 1688, the privilege of parliamentary freedom of speech and debate received final statutory confirmation. Accordingly, the 9th Article of the English Bill of Rights expressly provides:

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[45] WITTKE, *op. cit., supra* note 3, at 30.

[46] HOWELL, STATE TRIALS 296; 2 HALLAM, CONSTITUTIONAL HISTORY OF ENGLAND ? (1930).

[47] WITTKE, *op. cit.*

[48] HATSELL, *op. cit., supra,* note 15, at 250-258.

[49] JOURNAL OF THE HOUSE OF COMMONS 19, 25 (1667-1687; JOURNAL OF THE HOUSE OF LORDS 166, 223 (1666-1675); MAY'S TREATISE, *op. cit., supra* note 1, at 49.

[50] 3 HOWELL, *op. cit., supra* note 46, at 331-332.

> "That the freedom of speech, and debate or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." [51]

This provision of law reinforced the statute of 4 Henry VIII and gave a clear cut sanction to the claim of the House of Commons and the House of Lords that each has exclusive jurisdiction over words spoken within their respective chambers.[52] From here, a widespread diffusion of legislative immunity for speech and debate started. And tersely expressive of the universal recognition of this prerogative, is the statement of Lord Denman as early as 1838 that—

> "The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by the princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged." [53]

III. COMPARATIVE CONSTITUTIONAL PROVISIONS ON PARLIAMENTARY FREEDOM OF SPEECH

The historical material conveyed above portrays the evolution through which parliamentary privilege of freedom of speech attained recognition as being so essential for the protection of the rights of the people, and that no legislative assembly can exist nor properly function if this privilege is not secured and guaranteed to their representatives. Since this paramount legislative privilege is written into the great majority of the constitutions existing today, a comparison of the different provisions may well be dwelt with, as well as those constitutions without it. Such comparison yield the following:

First: The first form of provision guaranteeing parliamentary privilege of freedom of speech can be called the "absolute immunity clause". By this is meant that the exercise of the freedom may not invite any action whatsoever outside of Congress or Parliament, but it can be only impeached or questioned in either chamber where it was made. The earliest and best illustration is written in the English Bill of Rights of 1688 which states:

> "That the freedom of speech and debate or proceedings in Parliament ought *not to be impeached or questioned in any court or place out of Parliament.*" [54]

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[51] 1 WILLIAM AND MARY session 2, c. 2.

[52] MAY'S TREATISE, *op. cit., supra* note 1, at 50.

[53] Stockdale v. Hansard, 9 Ad. & Ell 1 (1838).

[54] ENGLISH BILL OF RIGHTS Art. 9 (1688); 3 PEASLEE, CONSTITUTION OF NATIONS 532 (1956). In these citations of constitutional provisions, the years stated indicate the year the constitution was approved or adopted.

The countries that have adopted above form are Australia,[55] Canada,[56] Ceylon,[57] New Zealand,[58] and Union of South of Africa,[59] whose enabling charters uniformly provide that the privileges and immunities of the members of their respective Parliaments shall be those held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and the members thereof. The same version is substantially contained in the United States Constitution which reads:

> "x x x and for any Speech or Debate in either House, they shall *not be questioned in any other Place.*" [60]

And the countries that follow almost literally the American provision are Austria,[61] China,[62] Denmark,[63] Ireland,[64] Japan,[65] Korea,[66] Norway,[67] Philippines,[68] and Turkey.[69]

Second: The second form may be called the "express immunity clause" which carries exactly the same meaning as the first version but worded differently in that it categorically prohibits any action

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[55] THE COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT Art. 1900 (1900); 1 PEASLEE, CONSTITUTION OF NATIONS 86 (1956).

[56] THE BRITISH NORTH AMERICA ACT Art. 18 (1867); *id.* at 363.

[57] THE CEYLON INDEPENDENCE ACT Art. 27 (1947); *id.* at 456-457.

[58] New Zealand is a Dominion of Great Britain. It has no specific written constitution, but certain enactments of the British Parliament can be considered constitutional enactments. The New Zealand Parliament—the function of which, according to the Constitution Act of 1852, is "to make laws for the peace, order and good government of New Zealand"—is a close copy of the British Parliament. It can be presumed that it enjoys same parliamentary privileges as enjoyed, held and exercised by the latter. See 2 *Id.* at 790-792.

[59] AN ACT TO CONSTITUTE THE UNION OF SOUTH AFRICA Art. 57 (1909 3 *Id.* at 452.

[60] CONSTITUTION OF THE UNITED STATES OF AMERICA Art. I, sec. 6 (1788), *Id.* at 584.

[61] FEDERAL CONSTITUTION OF AUSTRIA Art. 57 (1920) found in 1 *Id.* at 122.

[62] THE CONSTITUTION OF THE REPUBLIC OF CHINA Arts. 32 and 73 (1947) *Id.* at 515, 522. This is the Constitution before the Communist Government was established. It is presumed that this Constitution is still the fundamental law of the Republic of China headed by Chiang Kai-shek whose government is in Formosa. If Communist China has a written constitution, it would presumably follow the Russian form which do not provide for parliamentary privilege of freedom of speech.

[63] CONSTITUTION OF THE KINGDOM OF DENMARK ACT Art. 57 (1953) *Id.* at 740.

[64] CONSTITUTION OF THE REPUBLIC OF ICELAND Art. 15, par. 10 (1937) 2 *Id.* at 443-444.

[65] CONSTITUTION OF JAPAN Art. 51 (1946) *Id.* at 516.

[66] CONSTITUTION OF THE REPUBLIC OF KOREA (South Korea) Art. 50 (1948) *Id.* at 553. If North Korea has a written constitution, there would probably be no provision of parliamentary freedom of speech as in the Russian constitution.

[67] CONSTITUTION OF NORWAY Art. 66 (1814) 3 *Id.* at 57.

[68] CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Art. VI, sec. 15 (1935) *Id.* at 170.

[69] THE TURKISH CONSTITUTION Art. 17 (1945) *Id.* at 405.

in law, civil or criminal, arising from or based upon any speech or opinion expressed in the discharge of legislative function which would otherwise be available but for this declaratory exemption. It does not say whether the exercise of such privilege can be impeached or questioned by the Parliament or Assembly itself. However, such power is an inherent prerogative of any legislative body or can be implied from the right to promulgate rules of its own proceedings, and from its power to discipline or punish the members thereof.[70] Examples of this pattern are those contained in the French Constitution which states:

> "No member of Parliament may be *prosecuted, sought by the police, arrested, detained, or tried* because of opinions expressed or votes cast by him in the exercise of his function," [71]

or in the Constitution of Panama which provides:

> "The members of the National Assembly are *not legally responsible* for their opinions and votes in the performance of duty." [72]

Other countries having this type of constitutional guarantee are Argentina,[73] Belgium,[74] Bulgaria,[75] Burma,[76] Cambodia,[77] Colombia,[78] Costa Rica,[79] Czechoslovakia,[80] Ecuador,[81] El Salvador,[82] Greece,[83] Haiti,[84] Honduras,[85] India,[86] Indonesia,[87] Iraq,[88] Italy,[89] Jordan,[90]

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[70] CUSHING, *op. cit., supra* note 2, at 211; *ex parte* D. O. McCarthy, 29 C 395 (1866).

[71] CONSTITUTION OF THE FRENCH REPUBLIC Art. 21 (1946) 2 PEASLEE 9. Same provision is carried as Art. 26 in the new 1958 French Constitution under De Gaulle.

[72] CONSTITUTION OF THE REPUBLIC OF PANAMA Art. 113 (1946) 3 *Id.* at 84.

[73] CONSTITUTION OF THE ARGENTINE REPUBLIC Art. 61 (1949) 1 *Id.* at 59.

[74] CONSTITUTION OF BELGIUM Art. 44 (1831) *Id.* at 156.

[75] CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BULGARIA Art. 29 (1947) *Id.* at 2665.

[76] CONSTITUTION OF THE UNION OF BURMA Art. 68 (1947) *Id.* at 288-289.

[77] CONSTITUTION OF THE KINGDOM OF CAMBODIA Art. 54 (1947) *Id.* at 354.

[78] POLITICAL CONSTITUTION OF THE REPUBLIC OF COLOMBIA Art. 106 (1945) *Id.* at 555.

[79] CONSTITUTION OF THE REPUBLIC OF COSTA RICA Art. 110 (1949) *Id.* at 587.

[80] CONSTITUTION OF THE CZECHOSLOVAK REPUBLIC Art. 44 (1948) *Id.* at 700.

[81] CONSTITUTION OF THE REPUBLIC OF ECUADOR Art. 33 (1946) *Id.* at 776.

[82] CONSTITUTION OF EL SALVADOR Art. 33 (1950) *Id.* at 823.

[83] CONSTITUTION OF GREECE Art. 62 (1952) 2 *Id.* at 101.

[84] CONSTITUTION OF THE REPUBLIC OF HAITI Art. 60 (1950) *Id.* at 138-139.

[85] POLITICAL CONSTITUTION OF THE REPUBLIC OF HONDURAS Art. 98 (1936) *Id.* at 166.

[86] CONSTITUTION OF INDIA Art. 105, par. (2) (1949) *Id.* at 246-247.

[87] PROVISIONAL CONSTITUTION OF THE REPUBLIC OF INDONESIA Art. 71 (1950) *Id.* at 381.

[88] THE IRAQ CONSTITUTION Art. 60, par. (1) (1925) *Id.* at 423.

[89] CONSTITUTION OF THE ITALIAN REPUBLIC Art. 69 (1947) *Id.* at 490.

[90] THE CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN Art. 87 (1952 *Id.* at 538.

Laos,[91] Lebanon,[92] Luxembourg,[93] Netherlands,[94] Paraguay,[95] Peru,[96] Syria,[97] Thailand,[98] Uruguay,[99] Venezuela,[100] Vietnam,[101] and Yugoslavia.[102]

Third: The third form of parliamentary privilege of freedom of speech may be called the "inviolability clause." This kind merely makes a very broad and general statement that for opinions expressed in the discharge of legislative functions, a member thereof is inviolable. The scope of the privilege rests upon the meaning and construction on the words "inviolable" or "immune." In their broadest sense these words are so absolute that a member exercising the right may not even be questioned within the legislative body itself. A clear example is written in the Bolivian Constitution which reads:

> "Deputies and senators are *inviolable* at all time for the opinions expressed by them in the discharge of their duties."[103]

In other constitutions, instead of "inviolable", the word "immune" is used as in the Cuban Constitution:

> "Senators and representatives shall be *immune* with respect to the opinions they express and votes they cast in the exercise of their office."[104]

Countries which have adopted more or less the same phraseology as in the Bolivian and Cuban provisions are Brazil,[105] Chile,[106] The Do-

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[91] CONSTITUTION OF THE KINGDOM OF LAOS Art. 35 (1947) *Id.* at 658.

[92] CONSTITUTION OF LEBANON Art. 39 (1926) *Id.* at 576.

[93] THE CONSTITUTION OF THE GRAND DUCHY OF LUXUMBOURG Art. 68 (1868) *Id.* at 6650.

[94] CONSTITUTION OF THE KINGDOM OF NETHERLANDS Art. 100 (1815) *Id.* at 769.

[95] CONSTITUTION OF THE REPUBLIC OF PARAGUAY Art. 74 (1940) 3 *Id.* at 122.

[96] CONSTITUTION OF THE REPUBLIC OF PERU Art. 104 (1933) *Id.* at 143.

[97] CONSTITUTION OF SYRIA Art. 44 (1950) *Id.* at 368.

[98] CONSTITUTION OF THE THAI KINGDOM Sec. 56 (1952) *Id.* at 391.

[99] CONSTITUTION OF THE ORIENTAL REPUBLIC OF URUGUAY Art. 112 (1951) *Id.* at 626.

[100] CONSTITUTION OF VENEZUELA Art. 77 (1953) *Id.* at 714.

[101] ORDINANCE NO. 1 OF JULY 1, 1949 FOR THE ORGANIZATION AND OPERATION OF PUBLIC INSTITUTION IN VIETNAM Art. 17, *Id.* at 747.

[102] CONSTITUTION OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA Art. 57 (1946) *Id.* at 779.

[103] POLITICAL CONSTITUTION OF THE BOLIVIAN STATE Art. 52 (1945) 1 *Id.* at 185.

[10] CONSTITUTION OF THE REPUBLIC OF CUBA Art. 127 (1940) *Id.* at 634. This is the fundamental law before the Fidel Castro regime.

[105] CONSTITUTION OF THE UNITED STATES OF BRAZIL Art. 44 (1946) *Id.* at 216.

[106] POLITICAL CONSTITUTION OF THE REPUBLIC OF CHILE Art. 32 (1925) *Id.* at 488.

minican Republic,[107] Mejico,[108] and Nicaragua.[109] Afghanistan and Libya however state this guarantee quite differently. Thus the Afghanistan Constitution provides:

> "Members of the National Council have full liberty to express their views before the Council, and *no objection* can be raised on these grounds," [110]

while the Constitution of Libya provides:

> "Members of the National Council have full liberty to express opinions they have expressed in either Chamber or in the committees thereof, subject to the provisions of the respective rules of procedure." [111]

It will be observed that the Afghanistan provision is not very expressive of the privilege because the phrase "no objection can be raised on these grounds" is not clearly indicative whether it refers to legal proceedings outside Parliament or Congress or objections from the assembly or members thereof; while in the Libya provision, subjection of the privilege to the rules of procedure may present problems in the exercise of the right.

Fourth: This form of constitutional provision may be classified as the "immunity waiver clause," for the reason that the legislative assembly acting as a body may waive the immunity contemplated for. Finland, Iceland and Sweden have this kind of parliamentary privilege. Their respective constitutions provide as follows:

> "No representative should be prosecuted or deprived of his liberty because of opinions expressed by him in the Diet or because of his attitude during the proceedings, *unless the Diet has authorized it* by a vote having mustered at least five-sixths of the votes casts." [112]
>
> "No member may be made responsible outside the Althing for statements made by him in the Althing, except *with the permission of the house concerned.*" [113]
>
> "No member of the Riksday shall be prosecuted or derived of his liberty on account of his actions or utterances in that capacity *unless the chamber to which he belongs has authorized such action by an explicit resolution,* adopted by at least five-sixths vote. xxx" [114]

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[107] CONSTITUTION OF THE DOMINICAN REPUBLIC Art. 27 (1947) *Id.* at 754.
[108] POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO Art. 61 (1917) 2 *Id.* at 679.
[109] CONSTITUTION OF THE REPUBLIC OF NICARAGUA Art. 140 (1950) 3 *Id.* at 17.
[110] FUNDAMENTAL PRINCIPLES OF THE GOVERNMENT OF AFGHANISTAN Art. 38 (1931) 1 *Id.* at 24.
[111] CONSTITUTION OF LIBYA Art. 124 (1951) 2 *Id.* at 611.
[112] DIET ACT OF THE REPUBLIC OF FINLAND Art. 13 (1928) 1 *Id.* at 880.
[113] CONSTITUTION OF THE REPUBLIC OF ICELAND Art. 49 (1944) 2 Id. at 206.
[114] CONSTITUTION OF THE REPUBLIC OF SWEDEN Art. 110 (1809) 3 *Id.* at 322.

It is evident under the above constitutional provisions that an action, civil or criminal, may be instituted against opinions and statements made by members of their respective legislative assembly. However, the required vote to warrant such action may be difficult to obtain. As construed in England and in the United States, the jurisdiction to question or impeach utterances in Parliament or Congress could not be surrendered by Parliament or Congress itself. This is the heart of the privilege—not to be impeached or questioned in any other place. The Finnish, Iceland and Swedish constitutions clearly depart from this concept by allowing their respective assembly to waive the protection.

Fifth: The last type of constitutional provision on parliamentary freedom of speech may be called the "qualified immunity clause." This form explicitly removes from the immunity speeches which are libelous, defamatory or abusive. Portugal and Germany have adopted this form as follows:

> "Art. 89. The members of the National Assembly shall enjoy the following immunities and prerogatives:
>
> (a) They shall be inviolable as regards the opinions and votes which they give in the exercise of their mandate, subject to the limitations laid down in paragraphs 1 and 2.
>
> *** 1. Inviolability in respect of their opinions and votes *shall not exempt members of the National Assembly from civil and criminal liabilities for libel, slander and abuse, outrage on public morality, or public incitement to crime.*
>
> 2. The National Assembly may withdraw the mandates of those deputies who express opinions opposed to the existence of Portugal as an independent State, or in any way instigate to the violent overthrow of the social and political order." [115]
>
> "Art. 46. (1) A deputy may at no time be subject to legal or disciplinary action or otherwise be called to account outside the Bundestag because of his vote or any utterance in the Bundestag or in one of its committees. *This shall not apply in the case of defamatory insults.*" [116]

As any other privilege or power, legislative freedom of speech enjoyed by members of legislative assemblies is susceptible to abuse and might occasion offense or prejudice to a particular person or group of individuals; or calumnious, or even hazardous to the public place; but complete immunity is afforded to them.[117] It is in this sense that the privilege is said to be absolute by several writers.[118]

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[115] POLITICAL CONSTITUTION OF THE PORTUGUESE REPUBLIC Art. 89 (1935) 3 *Id.* at 219.

[116] BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY Art. 46 (1949 *Id.* at 219.

[117] 11 AMER. JUR. 1118.

[118] Veeder, *op. cit. supra* note 23; NEWELL, SLANDER AND LIBEL sec. (3rd ed.); COOLEY, TORTS 425 (3rd ed.); 17 R.C.L. 330.

Public interest and welfare demand that members of legislative assemblies should be allowed to express their sentiments and speak their minds fully and fearlessly upon all questions and subjects [119] and all actions for said words spoken are absolutely forbidden, even if it be alleged and proved that the words were spoken falsely, knowingly and with evident malice.[120] But this well-established absolute immunity under Anglo American law, is not possible under the Portuguese and German constitutional provisions above quoted.

Countries without Parliamentary Freedom of Speech:

The foregoing shows the different types of constitutional provisions guaranteeing parliamentary privilege of freedom of speech contained in the constitutions of a great majority of the countries of the world today. On the other hand, there are several countries whose written contitutions provide only for a qualified privilege against prosecution or arrest and without any provision on parliamentary freedom of speech. The constitution of the Union of Soviet Socialist Republics is a typical example of this group which states:

> "A member of the Supreme Soviet of the USSR may not be prosecuted or arrested without the consent of the Supreme Soviet of the USSR or when the Supreme Soviet of the USSR is not in session, without the consent of the Presidium of the Supreme Soviet of the USSR." [121]

There is no guarantee of freedom of speech to the members of the Supreme Soviet or the Presidium, and even if they had, it is doubtful whether it can be exercised in the same way it is understood in England, the United States and other democratic governments. This Russian pattern is primarily followed by the different Soviet states that composes the Rusian federal system.[122] And it is not surprising that the written constitutions of Albania,[123] Hungary,[124]

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[119] Coffin v. Coffin, 4 Mass. 1, 3 Am. Dec. 189 (1809).

[120] Barsky v. United States, 167 F. 2d 241, 83 U.S. App. D.C. 127 (1948); Cochran v. Couzens, 42 F. 2d 783, 59 App. D.C. 374 (1930).

[121] CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS Art. 52 (1936), 3 PEASLEE, op. cit. at 491.

[122] Examples: CONSTITUTION OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC Art. 34 (1937), 1 *Id.* at 334; CONSTITUTION OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC Art. 34 (1937), 3 *Id.* at 423.

[123] New constitution of Albania is not available, but it is certain that today it has a communistic form of government. See 1 *Id.* at 32-34.

[124] CONSTITUTION OF THE HUNGARIAN PEOPLE'S REPUBLIC Art. 26 (1940), 2 *Id.* at 727.

Mongolia,[125] Poland,[126] and Romania [127] which are often called Russian satellites, are also without any such guarantee. It can also be presumed that no provision exists in the written constitutions, if any, of Communist China, North Korea, and East Germany.[128]

Other countries whose constitutions provide for parliamentary freedom from arrest but without any provision on parliamentary freedom of speech are Ethopia,[129] Iran,[130] Liberia,[131] and Spain.[132] The constitution of Israel,[133] San Marino [134] and Switzerland [135] do not contain any provision on parliamentary privileges. And the other nations which do not have at present such privileges by reason of the nature of their government or lack of constitution are Egypt,[136] Guatemala, [137] Nepal,[138] Saudi Arabia,[139] the Vatican City,[140] and Yemen.[141]

The State Constitutions

Another area of comparison on parliamentary freedom of speech consists of the different consitutions of the states comprising the United States of America. A perusal in this regard seems necessary

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[125] CONSTITUTION OF THE MONGOL PEOPLE'S REPUBLIC Art. 26 (1940), 2 *Id.* at 727.

[126] CONSTITUTION OF THE POLISH PEOPLE'S REPUBLIC Art. 16, par. 3 (1952), 3 *Id.* at 190.

[127] CONSTITUTION OF THE RUMANIAN PEOPLE'S REPUBLIC Art. 34 (1952), 3 *Id.* at 239.

[128] Their written constitutions are not available.

[129] CONSTITUTION OF ETHIOPIA Art. 45 (1931), 1 *op. cit.* at 858.

[130] IRANIAN CONSTITUTION Art. 12 (1906), 2 *Id.* at 397.

[131] CONSTITUTION OF THE REPUBLIC OF LIBERIA Art. 2, sec. 11 (1847), *Id.* at 590.

[132] ACT OF JULY 17, 1942 CREATING THE SPANISH CORTES Art. 5 (1942), 3 *Id.* at 286.

[133] See CONSTITUTIONAL LEGISLATION IN ISRAEL (Transition law) (1949), 2 *Id.* at 455-477.

[134] See ELECTORAL LAW OF SAN MARINO (1926), 3 *Id.* at 254-262.

[135] See FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION (1874), *Id.* at 325-356.

[136] The 1923 Constitution of Egypt was abrogated on Dec. 3, 1952 and a three-year transition period has been proclaimed until January, 1956. A special committee was appointed to draw up a new constitution which is not yet available. See 1 *Id.* at 810-814.

[137] Guatemala is at present operating under a Political Statute of August 10, 1954 which abrogated the Guatemalan Constitution adopted in 1945. This statute has done away with the Congress which was established under the former Constitution, a unicameral body upon which legislative power was vested. See 2 *Id.* at 114-126.

[138] No legislative body has yet been constituted under the Interim Government of Nepal Act of 1951. See 2 *Id.* at 739-750.

[139] Saudi Arabia is a Kingdom and the legislative functions are performed by an advisory council designated by the King. See 3 *Id.* at 263-276.

[140] Vatican City is treated as an independent sovereign. Legislative power is vested in the Pope, or during a vacancy in the pontificalece, in the Holy College. See 3 *Id.* at 666-699.

[141] Yemen is a democratic kingdom based on the principles of the Mohammedan religion which recognizes the dimie commandments and on the Koran. There is no written constitution. See 3 *Id.* at 750-752.

and appropriate considering the fact that the concepts of parliamentary privilege were transplanted strongly among the American Colonies which later formed the nucleus of the Union. A well-founded conclusion has been expressed that every British colony in America had a representative assembly majority which owed existence to royal commands in charters or instructions, and with political experience, these assemblies exercised parliamentary privileges more and more like the British Parliament.[142] Justice Story in fact commented that the privilege was derived from the practice of the British Parliament, and was in full force in the colonial legislation, and now belongs to the legislature of every State in the Union as a matter of constitutional right.[143] Parliamentary privilege of freedom of speech therefore did not come to the United States by accident, but it likewise grew, faltered and developed during the centuries of struggle between parliamentary power and the prerogatives of the Crown in England. And when the American people were at the threshold of emerging as an independent nation, they had fully become aware that the privilege was so essential that it was incorporated into the Articles of Federation and later into the federal Constitution.[144]

Thirty two (32) of the states have adopted the constitutional guarantee as written in the United States federal constitution, that is

> "for any speech and debate in either house, they shall not be questioned in any other place." [145]

The form which provides that

> "No member of the legislature shall be liable in any civil or criminal prosecution for words spoken in debate,"

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[142] See CLARKE, *op. cit., supra* note 24.

[143] STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES Sec. 866 (5th ed.).

[144] Frankfurter, *J.*, in Tenny v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951).

[145] ALABAMA Art. IV, sec. 56 (1901); ARKANSAS Art. V, sec. 15 (1874); COLORADO Art. V, sec. 16 (1876); CONNECTICUT Art. III, sec. 13 (1818); DELAWARE Art. II, sec. 13 (1897); GEORGIA Art. III, sec. 7, par. 3 (1877); IDAHO Art. III, sec. 7 (1890; ILLINOIS Art. IV, sec. 14 (1870); INDIANA Art. IV, sec. 8 (1851); KANSAS Art. II, sec. 22 (1859); KENTUCKY sec. 43 (1891); LOUISIANA Art. III, sec. 13 (1913); MICHIGAN Art. V, sec. 8 (1908); MINNESOTA Art. IV, sec. 8 (1857); MISSOURI Art. III, sec. 19 (1875); MONTANA Art. V, sec. 15 (1889); NEW JERSEY Art. IV, sec. 4, par. 9 (1844); NEW MEXICO Art. IV, sec. 13 (1912); NEW YORK Art. III, sec. 11 (1894); NORTH DAKOTA Art. II, sec. 42 (1889); OHIO Art. II, sec. 12 (1841); OKLAHOMA Art. V, sec. 22 (1807); OREGON Art. IV, sec. 9 (1857); PENNSYLVANIA Art. II, sec. 15 (1873); RHODE ISLAND Art. IV, sec. 5 (1842); SOUTH DAKOTA Art. III, sec. 11 (1889); TENNESSEE Art. II, sec. 13 (1870); TEXAS Art. III, sec. 21 (1976); UTAH Art. VI, sec. 8 (1895); VIRGINIA Art. IV, sec. 48 (1902); VIRGINIA Art. IV, sec. 48 (1902); WEST VIRGINIA Art. VI, sec. 17 (1872); WYOMING Art. III, sec. 16 (1889). (Citations refer to the constitution of the state and the year indicates when the constitution was first adopted).

is adopted by seven (7) states.[146] Five (5) states have constitutional provisions on parliamentary freedom of arrest, but no provision on parliamentary freedom of speech [147] while two (2) states have the latter provision but do not provide for the former,[148] and one (1) state has no provision at all on parliamentary privileges.[149] Three (3) states however have significantly incorporated their parliamentary freedom of speech provision in their declaration of fundamental rights section instead of putting such provision under the legislative powers section,[150] and the constitution of Massachusetts is a good example of this group. Her constitution provides:

> "Art. 21. Freedom of Debate, etc. and Reason thereof.—The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any court or place whatsoever."

IV. THE NATURE AND SCOPE OF PARLIAMENTARY FREEDOM OF SPEECH

The Philippine Constitution provides:

> "The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of peace, be privileged from arrest during their attendance at the returning from the same; *and for any speech or debate therein, they shall not be questioned in any other place.*" [151]

The above-quoted provision secures a qualified privilege from arrest which affords only a *temporary* protection and parliamentary freedom of speech which affords immunity from substantive liability.[152]

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[146] ALASKA Art. II, sec. 6 (1859); ARIZONA Art. IV, Part 2, sec. 7 (1912); HAWAII Art. III, sec. 8 (1959); MAINE Art. IV (iii) sec. 8 (1919); NEBRASKA Art. III, sec. 26 (1875); WASHINGTON Art. II, sec. 17 (1889); WISCONSIN Art. IV, sec. 16 (1848). MARYLAND Art. III, sec. 18 (1867) follows this same provision but she has been grouped with the other states which have included their parliamentary immunity clause under fundamental rights.

[147] CALIFORNIA Art. IV, sec. 11 (1879); IOWA Art. III, sec. 14 (1957); MISSISSIPPI Art. IV, sec. 48 (1890); NEVADA Art. IV, sec. 11 (1864); and, SOUTH CAROLINA Art. III, sec. 14 (1895).

[148] NORTH CAROLINA Art. II, sec. 17 (1876); VERMONT Chap. I, Art. 14 (1793).

[149] Florida, but it is generally accepted that parliamentary immunity exists in every state in the Union, either by Constitution, legislative enactment or as a part of the accepted common law. Kelly v. Daro, 47 Cal. App. 2d 418, 118 P. 2d 37 (1941).

[150] MARYLAND Art. 10 (Declaration of Rights) (1867) (see footnote 145 *supra*); MASSACHUSETTS Art. 21 (part of the First, Declaration of Rights) (1780); NEW HAMPSHIRE Art. 30 (First Part, Bill of Rights) (1792 and 1912); A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT Chap. 1 (1793 and 1913).

[151] PHIL. CONST. Art. VI, sec. 15.

[152] Tenny v. Brandhove, *op. cit., supra* note 152; see 95 L. ed. at 1031.

Significantly, the Philippine provision is taken from the United States Constitution [153] and therefore, it has to be reasonably inferred that the framers of the Philippine charter intended by the use of the same language, to import the same application and construction given to the privileges in the United States, as well as in England where parliamentary privileges originated.[154]

In England the legal landmark which first defined the scope of parliamentary immunity in Parliament is the decision of Lord Denman in 1838, stating:

> "x x x By consequence, whatever is done within the walls of either assembly must pass, without question in any other place. For speeches made in Parliament by a member, to the prejudice of any other person or hazardous to the public peace, that member enjoys complete impunity. For every paper signed by the Speaker by order of the House, though to the last degree calumnious, or even if it brought personal suffering upon individuals, the Speaker cannot be arraigned in a court of justice. But if the calumnious or inflamatory speeches should be reported and published, the law will attach responsibilities on the publisher. So if the Speaker by authority shall exempt him from question, his order no more justify the person who executed it than King Charles' warrant for levying ship-money could justify his revenue officer." [155]

Above-quoted decision has been consistently followed since then and about half a century later, Lord Chief Justice Coleridge summarized the immunity in an elegant but concise statement, thus:

> "What is said or done within the walls of Parliament cannot be inquired into in a court of law." [156]

At present, a recognized writer has unequivocably set forth the absolute nature of the privilege in England, as follows:

> "The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the rules of order in debate (see Chap. XVIII), a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injuries to the character of individuals, and he is protected by his privilege from action for libel, as from any other question or molestation." [157]

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[153] U.S. CONSTITUTION Art. I, sec. 6.

[154] ENGLISH BILL OF RIGHTS OF 1688 9th Article.

[155] Stockdale v. Hansard, *op. cit.*, *supra* note 53.

[156] In Bradlaugh v. Gossett, 12 Q.B.D. 271 (1869); see *ex parte* Wagon, L. R. 4 Q.B. 573 (1869); *Ex parte* Herbert, 1 K.B. 594 (1935).

[157] MAY, PARLIAMENTARY PRACTICE 51 (14th ed. 1946); see Dillon v. Balfour, 20 L.R. Dr. 600 (1887); see GATLEY, LIBEL AND SLANDER 211-213 (3rd ed. 1938).

In the United States, the decision that has become the basic pronouncement as to the scope, nature and reason of the privilege was rendered by Chief Justice Parsons in 1808 saying

> "In considering this article,[158] it appears to me that the privilege secured by it is not so much the privilege of the house as an organized body, as of each individual member composing it, who is entitled to this privilege even against the declared will of the house. For he does not hold this privilege at the pleasure of the house, but *derives it from the will of the people*, expressed in the constitution, which is paramount to the will of either or both branches of the legislature. In this respect, the privilege here secured resembles other privileges attached to each member by another part of the constitution, by which he is exempted from arrests on mesne (or original) process, during his going to, returning from or attending the general court. Of these privileges thus secured to each member, he cannot be deprived by a resolve of the house or by an act of the legislature. These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but *to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal.* I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to *delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office;* and I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules. I do not confine the member to his place in the house; and I am satisfied that there are cases in which he is entitled to this privilege when not within the walls of the representatives' chamber." [159]

In *Kilbourn vs. Thompson,*[160] the decisions of Lord Denman and Chief Justice Parsons above quoted have been cited as most authoritative on the construction of the immunity enjoyed by members of legislative bodies. Same decisions were controlling in the case of *Cochran vs. Couzens* [161] and in the case of *Barsky vs. United States* [162] the rule of absolute parliamentary immunity was reiterated as follows:

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[158] MASSACHUSETTS CONSTITUTION Art. 21 (Part of the First Declaration of Rights), quoted on p. 28 above.
[159] Coffin v. Coffin, *op. cit., supra* note 119.
[160] 103 U.S. 168, 26 L. ed. 337 (1881).
[161] *Op. cit., supra* note 120.
[162] *Ibid.*

> "x x x The question presented by these contentions must be viewed in the light of the established rule of absolute immunity of governmental officials, Congressional and administrative, from liability for damage done by their acts or speech, even though knowingly false or wrong. The basis of so drastic and rigid a rule is the overbalancing of the individual hurt by the public necessity for untrammeled freedom of the legislative and administrative activity, within the respectvie powers of the legislature and the executive."

And in the recent case of *Tenny vs. Brandhove* [163] Justice Frankfurter after tracing briefly the historical background of the privilege and quoting from the *Coffin* and *Kilbourn* cases, once more underscored the importance of the privilege saying —

> "The reason for the privilege is clear. It was well summarized by James Wilson, an influential member of the Committee of Detail which was responsible for the provision in the Federal Constitution. 'In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence.' " [164]

Based on the above, parliamentary privilege of freedom of speech permits unlimited freedom in speeches or debates in the floor of Congress, in committee deliberations, inquiries or investigations. It extends to the act of giving a vote, rendering of a written report, authorizing or sponsoring resolutions, and to all such acts or things generally done from the nature and in the execution of the office or in the session of the House or committee thereof, in relation to the business before it. With this as criterion, it is evident that the act of voting in the affirmative by the members of the House of Representatives on a resolution declaring a named person in contempt of the House and ordering his arrest; [165] slanderous or defamatory words against a tax consultant uttered by a Senator in the chamber of the Senate in the course of a speech pertinent and relevant to a matter under inquiry of said body; [166] a resolution of the House of Representatives creating and authorizing the Committee on Un-American Activities to investigate subversive and un-American propaganda activities; [167] the action of the members of a state legislative committee inquiring into Un-American activities, summoning a person to appear before them at a hearing, initiating contempt pro-

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[163] *Op. cit., supra* note 152.
[164] Citing WILSON, *op. cit., supra* note 5.
[165] Kilbourne v. Thompson, *op. cit., supra* note 160.
[166] Cochran v. Couzens, *op. cit., supra* note 120.
[167] Barsky v. United States, *ibid.*

ceedings against him, and performing other acts in connection with said inquiry and contempt;[168] are well within the compass of parliamentary speech and debate. Likewise, statements made in a judicial or quasi-judicial proceeding by a member of the General Assembly after a resolution of impeachment had been introduced by him containing the words complained of, and the resolution of the House of General Assembly referring the matter to the Judiciary Committee;[169] slanderous statements made by a member of the Senate on the floor of that body in open session and injuries to the reputation of the complainant;[170] vigorous and unjustified attack on the floor of the Senate of Oklahoma denouncing the integrity and sincerity of the Criminal Court of Appeals of that State and the individual members thereof, in connection with a murder case in which the appellate court affirmed a verdict of conviction and death penalty;[171] and a resolution of the majority members of the House of Representatives declaring a reporter in contempt of the house and ordering him committed therefor;[172] were all held inactionable. On the other hand, the mantle of protection extended by the privilege was refused to stop an action for liability against the slanderous remarks uttered by a member of the House of Representatives of Massachusetts made to another member while conversing in the passage-way because he was not discharging any official duty as such member at the time;[173] or to exempt calumnious or inflammatory speeches reported and published outside of the legislature;[174] or to avoid litigation on a televised statement of a Senator, a Senate Committee Chairman, from his home more than four months after the adjournment of the Legislature, reiterating his speech against the Court of Appeals of Oklahoma and the individual members thereof.[175]

In what sense is the immunity absolute? —

It can be seen from the above illustrative cases that a member of Parliament or Legislature can say or write what he pleases on the floor or before a committee or in any other proceeding directly connected with the legislature, or from the nature of, and in connection with the execution of his office, and no matter whether what he says or writes is abusive, slanderous, calumnious, or even hazardous to public peace or bring prejudice or suffering upon individuals,

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[168] Tenny v. Brandhove, *op. cit., supra* note 152.
[169] Van Riper v. Tumulty, 56 A. 2d 611, 26 N.J. Miss. 37 (1948).
[170] Cole v. Richards, 108 N.J.L. 356, 158 A. 466 (1932).
[171] State ex rel Oklahoma Bar Ass'n v. Nix, Okla., 295 P. 2d 286 (1956).
[172] Canfield v. Gresham, 82 T. 10, 17 S.W. 390 (1891).
[173] Coffin v. Coffin, *op. cit., supra* note 119.
[174] Stockdale v. Hansard, *op. cit., supra* note 53.
[175] State ex rel Oklahoma Bar Ass'n. v. Nix, *supra* note 171.

he cannot be sued for slander or libel or for damages, or otherwise questioned outside of the legislature. No court of the land will take cognizance of any action based upon a speech or address delivered in Parliament or Congress by any member thereof. This immu nity cannot be erased by mere averment that the words were spoken unofficially and not in the discharge of his duties as a legislator [176] nor destroyed or defeated by a claim of unworthy purpose for then this would allow judicial scrutiny into the motive of legislators.[177] Thus it has been held by the United States Supreme Court:

> "The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives." [178]

However, parliamentary immunity from suit, civil or criminal, should mean such suit as would result to the arrest or conviction of the lawmakers or would render him liable to any kind of damage or prejudice whatsoever. The immunity may not be claimed in order to refuse a subpoena ordering a member of Congress to appear in court and testify in a case about certain acts or proceedings, if any had been taken, in connection with a statute which provided for a survey to be done about rentals, and whether or not the commission to undertake certain activities under the statute has already been disbanded, the lawmaker not being a party to the case and neither would his testimony subject him to any suit of any kind or will result in his personal liability or arrest.[179] The immunity likewise cannot extend to persons other than senators or representatives, and therefore a sergeant-at-arms of the national House of Representatives was held liable to plaintiff for an arrest on warrant issued by the Speaker on the order of the House although the members of said house were held not liable.[180] And it cannot be used in defense by city councilors in an action for libel and slander filed against them for their malicious and defamatory remarks made in council proceedings.[181]

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[176] Cochran v. Couzens, *op. cit., supra* note 120.

[177] Fletcher v. Peck, 6 Cranch 87, 3 L. ed. 162 (1810); Arizona v. California, 283 U.S. 423, 51 S. Ct. 522, 75 L. ed. 1154 (1938).

[178] Tenny v. Brandhove, *op. cit., supra* note 152.

[179] Lincoln Building Associates v. Barr, *et al.*, 1 Misc. 2d 511, 147 N.Y.S. 2d 178 (1955).

[180] Kilbourne v. Thompson, *op. cit., supra* note 160.

[181] Branigan v. State, 209 Wis. 249, 244 N.W. 767 (1932).

To what extent may Parliament or Congress impeach or question the exercise of the privilege and may the courts intervene?

While there is parliamentary immunity from suit, civil or criminal, for speech and debate spoken in Parliament or Congress, there is undoubtedly no question that such speech or debate may be questioned or impeached in the halls of the Assembly by the members thereof, or by a committee duly constituted to investigate it, if such words or assertions necessitate an inquiry. If a speech is libelous and defamatory, any members of the legislative assembly can have it immediately stricken off the records or deleted from the journal of the House. The legislator may be censured or reprimanded or even committed to prison, for such vilifying speech or insulting remarks. But could a privileged speech or utterance in a debate which is definitely defamatory or calumnious be investigated by a congressional committee which makes a report to, and adopted by, the House, deciding that such a speech constitutes a disorderly behavior for which the legislator can be punished by suspension or expulsion? This precise question has recently been presented before the Supreme Court of the Philippines in the case of *Sergio Osmeña, Jr.* vs. *Salipada K. Pendatun, et al.*[182] The facts of the case are as follows:

In an hour of privilege to deliver a speech entitled "A Message to Garcia" before the House of Representatives, Congressman Sergio Osmeña, Jr.[183] made serious imputations of bribery against then President of the Philippines Carlos P. Garcia.[184] The most stinging portion of his speech reads:

> "The people, Mr. President, have been hearing of ugly reports that under your unpopular administration the free things they used to get from the government are now for sale at premium prices. They say that even pardons are for sale, and that regardless of the gravity or seriousness of a criminal case, the culprit can always be hailed out forever from jail as long as he can come across with a handsome dole. I am afraid, such an anomalous situation would reflect badly on the kind of justice that your administration is dispensing.
>
> "Worse still, Juan de la Cruz [185] knows that appointments and promotions in the government are now included in the bargain counter. During my visits to the provinces, I was shocked to know from the

[182] Sergio Osmeña, Jr. v. Salipada K. Pendatun, *et al.*, G.R. No. L-17144, October 28, 1960.

[183] Son of the late President of the Philippines, Hon. Sergio Osmeña who was Vice-President to President Manuel L. Quezon who died in the United States during World War II.

[184] Newspaper reports and articles have been to the effect that the Garcia Administration was so graft ridden. Even *Time Magazine* had a couple of issues exposing graft and corruption in said administration.

[185] Name commonly used referring to a common man.

people themselves that an aspirant for the judiciary was fleeced of ₱10,000.00 as consideration for his appointment to the bench. Unfortunately for the poor aspirant, he has not been appointed in spite of his having paid that big amount. Promotions in the Armed Forces, so our people are well aware, have not been spared from this bargain sale of your mercenary administration. That is why the people are wondering about the existence of three, I repeat, three separate lists of promotions to full colonels, which is now the subject of a thorough investigation being conducted by the proper Senate Committee.

"It is said, Mr. President, that you vetoed the measure nationalizing rice and corn because of a previous commitment you had given to President Chan Kai-shek at Taipeh. But ugly tongues are continuing wagging that you had ten million reasons for vetoing the measure each reason of which cost ₱1.00. It is true, Mr. President, that the money was delivered to a former member of your Cabinet, and that it took at least two days to count the same?

"I have read, Mr. President, your main objections to the bill that would nationalize the rice and corn industry, which you caused to be returned to Congress with the request for the passage of a new version of the measure. Taken as a whole, these reasons you cited in vetoing the nationalistic bill boil down to one thing—do not nationalize the rice and corn industry. It is this vital industry which is the life and breath of 22 million Filipinos, because of a 10 million reasons which only your Excellency knows. This again is another proof that you are implementing your 'Filipino First' policy in reverse. The common *tao* has yet to see tangible and unmistakable proofs of this nationalistic policy in action before he will swallow it hook-line and a sinker.'" [186]

The privilege speech was delivered in an orderly manner in accordance with the Rules of the House and during which several members of the House interpellated, questioned and debated with him. In fact, upon motion filed by Congressman Manuel Zosa, the Speaker ordered deleted from the records of the house the above quoted portions of the speech particularly the charges of bribery against the then President of the Philippines.[187] Even after his discourse, Congressman Osmeña, Jr. was interpellated by Congressmen Cortez, Ligot, and Albano, and thereafter the House took other business, like the discussions of the proposed amendments to the Constitution,

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[186] "Filipino First" policy is giving preference to Filipinos in business and other kinds of opportunites.

[187] "MR. ZOSA

Mr. Speaker, I move for the striking off the record the statement of the gentleman that the President had 10 million reasons for vetoing the rice and corn nationalization bill, each reason costing ₱1.00, because, Mr. Speaker, that is unparliamentary and cowardice which is delivered on the floor.

THE SPEAKER

The same is deleted.

x x x

MR. ZOSA

I move, Mr. Speaker, that the unparliamentary remarks of the gentlman from the second district of Cebu that the President is on the side of the crooks and racketeers who surround him be stricken off the record."

of the Anti-Graft Bill and many others. Fifteen (15) days after Congressman Osmeña, Jr. had delivered and had been questioned on his privilege speech, and after many other businesses of the House of Representatives had intervened, the House of Representatives passed Resolution No. 59 creating a Special Committee, the pertinent portion of which reads:

> "WHEREAS, the charges of the gentleman from the Second District of Cebu, if made maliciously or recklessly and without basis in truth and in fact, would constitute a serious assault upon the dignity and prestige of the Office of the President, which is the one visible symbol of the sovereignty of the Filipino people, and would expose said office to contempt and disrepute; x x x
>
> "*Resolved by the House of Representatives,* that a special committee of fifteen Members to be appointed by the Speaker be, and the same hereby is, created to investigate the truth of the charges against the President of the Philippines made by Honorable Sergio Osmeña, Jr., in his privilege speech of June 23, 1960, and for such purpose it is authorized to summon Honorable Sergio Osmeña, Jr., to appear before it to substantiate his charges as well as to issue *subpoena* and/or the production of pertinent paper before it, and if Hon. Sergio Osmeña, Jr., fails to do so, to require him to show cause why he should not be punished by the House. The special committee shall submit to the House a report of its findings and recommendations before the adjournment of the present special session of the Congress of the Philippines."

Pursuant to the above resolution, the committee summoned Congressman Osmeña, Jr. to appear before it to substantiate his charges and if he fails, to require him to show cause why he should not be punished by the House. In a special appearance, Congressman Osmeña, Jr. appeared and assailed the jurisdiction of the Committee relying on Art. VI, sec. 15, of the Constitution guaranteeing absolute and complete parliamentary immunity. The Committee rejected the position of Congressman Osmeña, Jr. and in a rapid fire sequence of events, the Committee submitted a report to the House finding said congressman guilty of serious disorderly behavior, and acting on such report, the House of Representatives approved on the same day the report as submitted—just before the closing of its session—House Resolution No. 175, declaring Congressman Osmeña, Jr. guilty as recommended, and suspending him from office for fifteen months.[188]

In a verified petition for declaratory relief, certiorari and prohibition with preliminary injunction against the members of the Special Committee created by House Resolution No. 59, filed with

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[188] Fifteen months was also the remaining duration of his term as Congressman for the Second District of Cebu. Congressman Osmeña, Jr. argued that his penalty was in effect an expulsion.

the Supreme Court of the Philippines, Congressman Osmeña, Jr. contended that (1) the Constitution gave him complete parliamentary immunity, and so, for words spoken in the House, he ought not to be questioned in the manner the Special Committee did; (2) that his privilege speech did not constitute disorderly behavior for which he could be punished; and (3) supposing he could be questioned and disciplined therefor, the House had lost the power to do so because it had taken up other business before approving House Resolution No. 59, and that such was in violation of the Rules of the House. Respondents on the other hand contended the affirmative side of these issues and alleged as their main affirmative and special defense that the question raised is political which may not be inquired into by the courts under the principle of separation of powers.[189]

As regards the first issue, the Supreme Court held that Sec. 15, Article VI of the Constitution of the Philippines providing that "for any speech or debate" in Congress, the Senators or Members of the House of Representatives "shall not be questioned in any other place," a section copied from Section 6, clause 1 of Article I of the United States Constitution, has always been understood to mean that although exempt from prosecution or civil actions for their words uttered in Congress, the members of Congress may nevertheless, be questioned in Congress itself.

As regards the second issue, the Court while recognizing the character and nature of parliamentary immunity as a fundamental privilege cherished in every legislative assembly of the democratic world, it likewise recognized the express provision of the Constitution [190] that for an unparliamentary conduct, members of the Parliament or Congress can be, and have been, censured, committed to prison, suspended and even expelled by the votes of their colleagues.[191] In fact, it is a fundamental principle well-established in the United States and in England that the powers to punish or expel members of Congress or Parliament is inherently necessary and incidental to legislative power as was held in *Hiss v. Bartlett*,[192]

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[189] Mabanag v. Lopez Vito, 78 Phil. 1 (1947); Alejandrino v. Quezon, 46 Phil. 83 (1924); Vera v. Avelino, 77 Phil. 192 (1946); Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972, 83 L. ed. 1385 (1939); 1 COOLEY'S CONSTITUTIONAL LIMITATIONS, *op. cit., supra* note 6.

[190] Sec. 10(3) of the Philippine Constitution provides: "Each House may determine the rules of its procedures, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its mmbers, expel a member."

[191] MASON, MANUAL OF LEGISLATIVE PROCEDURE 402-403 (1953; 2 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES sec. 1665, 1141 (1907-1941).

[192] 62 Mass. 473, 63 Am. Dec. 768 (1855), *supra*.

Clifford v. Senate [193] and other subsequent cases.[194] As to the question whether personal attacks upon the Chief Executive constitute unparliamentary conduct or breach of order, the Court cited that in at least two occasions, the House of Representatives of the United States has adopted this view.[195]

With respect to the issue as to whether the House could still take punitive action against Congressman Osmeña, Jr. even after other business had transpired since he had delivered his privilege speech, a procedure clearly in violation of the standing Rules of the House, the Court observed that such was done in the House of Representatives of the United States in several instances.[196] It has also noted with stress that Resolution No. 59 was *unanimously* approved by the House Rules, which according to standard parliamentary practice may be done by unanimous consent. This view taken by the Court is in accord with the fundamental principle that a legislative assembly has full power to determine, adopt and enforce its own rules of procedure as to the settlement of controversies touching the election and qualification of its own members, and the ascertainment of all facts relative thereto, and to rescind, change, or suspend at will same by the necessary vote required by its rules.[197] And even if a resolution, statute or act of either House of Congress has been allegedly enacted or passed in violation of the rules of the legislative body, the courts cannot review the same nor inquire into the procedure or manner of its proceedings.[198] This, in fact, was the main ruling of the court—it could not extend any relief because it has no jurisdiction to interfere on the expulsion of petitioner. It held:

> "On the question whether delivery of speeches attacking the Chief Executive constitutes disorderly conduct for which Osmeña may be disciplined, many arguments pro and con have been advanced. We believe, however, that the House is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on fac-

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[193] 146 C 604, 80 P 1031 (1905), *supra.*

[194] Ex parte D. O. McCarthy, 29 C 395 (1866); In re Speakership, 15 C 520 P 707, 11 L.R.A. 241 (1890); Laverty v. Straub, et. al. 110 C 311, 134 P. 2nd 208 (1943).

[195] CANNON'S PRECEDENTS par. 1497 (William Willet, Jr. of New York), par. 1498 (Louis T. McFadden of Pennsylvania).

[196] LOUIS DESCHLER, CONSTITUTION, JEFFERSON'S MANUAL AND THE HOUSE OF REPRESENTATIVES 382 (1955).

[197] State v. Savings Bank of New London, 64 A. 5, 79 Conn. 141 (1906); State ex rel. X-Cal. Stores v. Lee, 122 Fla. 685, 166 So 568 (1936); Dinan v. Swig, 223 Mass. 516, 112 NE 91 (1916); Application of Lamb, 67 N.S. Super. 39, 169 A. 2d 822 (1961).

[198] State v. Savings Bank of New London, *ibid.;* State ex rel. Landis v. Thompson, 120 Fla. 860, 163 So. 270 (1935); Dinan v. Swig, *ibid.;* Ex parte Hague, 104 N.J. Eg. 369, 145 A 618 (1929); Application of Lamb, *ibid.*

tual circumstances of which the House knows best but which can not be depicted in black and white for presentation to, and adjudication by the Courts. For one thing, if this Court assumed the power to determine whether Osmeña's conduct constituted disorderly behavior, it would thereby have assumed appellate jurisdiction, which the Constitution never intended to confer upon a coordinate branch of the Government. The theory of separation of powers fastidiously observed by this Court, demands in such situation a prudent refusal to interfere. Each department, it has been said, has exclusive cognizance of matters within its jurisdiction and is supreme within its own sphere. (Angara v. Electoral Commission, 63 Phil. 139.)

> 'Sec. 200. *Judical interference with Legislature.*—The principle is well established that the courts will not assume a jurisdiction in any case which will amount to an interference by the judicial department with the legislature since each department is equally independent within the powers conferred upon it by the Constitution. x x x.
>
> 'The general rule has been applied in other cases to cause the courts to refuse to intervene in what are exclusively legislative functions. Thus, where the state Senate is given the power to expel a member, the courts will not review its action or revise *even a most arbitrary or unfair decision.*' (11 *Am. Jur.*, Const. Law, sec. 200, p. 902; italicizing ours.)

"The above statement of American law merely abridged the landmark case of Clifford v. French. In 1905, several senators who had been expelled by the State Senate of California for having taken a bribe, filed mandamus proceedings to compel reinstatement, alleging the Senate had given them no hearing, nor a chance to make defense, besides falsity of the charges of bribery. The Supreme Court of California declined to interfere, explaining in orthodox juristic language:

> *'Under our form of government, the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution.* It has been held by this authority that, even in the absence of an express provision conferring the power, every legislative body in which is vested the general legislative power of the state has *the implied power to expel a member for any cause which it may deem sufficient.* In Hiss v. Bartlett, 3 Gray 473, 63 Am. Dec. 768, the supreme court of Mass. says, in substance, that this power *is inherent in every legislative body; that it is necessary to enable the body 'to perform its high functions, and is necessary to the safety of the state;' That it is a power of self-protection, and that the legislative body must necessarily be the sole judge of the exigency which may justify and require its exercise.* 'x x x *There is no provision authorizing courts to control, direct, supervise, or forbid the exercise by either house of the power to expel a member. These powers are functions of the legislative department and therefore, in the exercise of the power thus committed to it,*

> *the senate is supreme.* An attempt by this court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an *attempt to exercise legislative functions,* which it is expressly forbidden to do.'
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> "We have underscored in the above quotation those lines which in our opinion emphasize the principles controlling this litigation. Although referring to expulsion, they may as well be applied to the case at bar: the House has exclusive power; *the courts have no jurisdiction to interfere.*" [199]

The Osmeña speech is unparalleled in Philippine politics and we know of no speech in the United States Congress or elsewhere in recent history that matches the virulence of the attack upon a Chief Executive. Yet, Congressman Osmeña, Jr. wanted to seek refuge even before his peers, under the shield of parliamentary immunity; let alone the fact that the man he vilified had no remedy before the courts. One consideration overlooked by Congressman Osmeña, Jr. is that the crime of bribery he attributed to then President Carlos P. Garcia is one of the grounds for impeaching him.[200] In fact, this would have been a better justification for the investigation which Resolution No. 59 did not mention. Therefore, Congressman Osmeña, Jr. should have reasonably expected the House as a body to investigate the serious charges he brought out and substantiate them or at least he could have furnished the House the sources of his information, so that appropriate action for impeachment may have been taken. This obligation he obviously refused to do under the theory that he was exempt by his parliamentary immunity.[201]

On the other hand, events that took place after the controversial speech depict how a strong executive could stir punitive action against a member of Congress, and this interference if also exceeded may in a large measure curtail parliamentary immunity.

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[199] Osmeña v. Pendatun, *op. cit., supra* note 182.

[200] Art. IX, sec. 1 of the Constitution of the Philippines provides: "The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for culpable violation of the Constitution, treason, *bribery,* or other high crimes."

[201] A comment on Parliamentary Free Speech by Teodoro B. Pison stated: "We cannot say with firm conviction that he accused the President with nothing but malice in his mind. Mr. Osmeña may have been motivated by his sincere desire to help rid the government of the evils that plague for it. And for sure, the President is not above censure. But one count against Mr. Osmeña is his failure to explain or even attempt to explain the charge and offer evidence in his behalf. This gives rise to the presumption that there was not a bit of truth to what he said and that he said it with malice and intent to defame. For all we know, he might have only wanted to attract public attention to suit his political ambitions." (35 PHIL. LAW JOURNAL 1209, 1219 (Sept., 1960). See also the case of the *Suspension of Congressman Sergio Osmeña,* Jr. by Senator Lorenzo M. Tañada and Senator Francisco Rodrigo (two separate comments), 1 SAN BEDA LAW JOURNAL 3-17 (Jan. to March, 1960).

After the speech of Congressman Osmeña, Jr. then President Carlos P. Garcia who was the titular head of the Nacionalista Party controlling both the House and the Senate held important caucuses the results of which were reflected in news items carried by metropolitan papers in Manila headlined "Garcia Asks House Leaders to Oust Osmeña, Jr." or "Garcia Confirms Bid to Expel Osmeña, Jr." [202] In fact, it took fifteen (15) days after delivering the speech before the House passed Resolution No. 59, a circumstance strongly indicative of the passive attitude House members have displayed in similar occasions.[203]

V. LEGISLATIVE STATESMANSHIP OR CONSTITUTIONAL AMENDMENT

Professor Leon R. Yankwich in his article wrote:

> "It is plain that the immunity began as a protection against executive interference with the individual legislator. It broadened so as to become an absolute shield against all outside interference with the legislative process itself. And this, not so much as a protection to the legislator as an essential condition for the existence and full development of the legislative process. Significantly, the Massachusetts Constitution considered freedom from legislative deliberation, speech and debate 'essential to the rights of the people.' Rightly. For, under a democratic regime, legislation is—theoretically at least—the expression of the public will and the means of expressing that will in laws, which the people, by the very nature of democratic assent, are bound to obey. By keeping the legislator free from outside domination, executive or other, by eliminating the threat of interference through prosecution, civil or criminal, the independent exercise of the rights of the people, through legislation, it was natural that, either by legislation or judicial construction, what had began as a defensive measure against executive interference should extend to all attempts to curtail freedom of legislation by court ac-

[202] *Manila Daily Bulletin* used this headline in its June 27 and July 1, 1960 issues. *The Manila Times*, the *Manila Chronicle*, and the *Philippines Herald* carried same news story with similar leads.

[203] Rep. Cipriano Primicias, Jr. delivered a privilege speech on June 30, 1960 severely castigating three members of the Supreme Court who are members of the House Electoral Tribunal for having allegedly acted in a biased manner in his electoral protest; Rep. Mario Bengzon delivered a speech on March 7, 1957 accusing the late President Ramon Magsaysay of alleged extortion and bribery in the amount of ₱2,000,000.00; Rep. Delfin Albano burned the *Time Magazine* on the floor of Congress and disrupted the proceedings of the House; Rep. Cornelio Villareal in the course of a privileged speech burned the Rules of the House and disrupted the proceedings of the Chamber; Rep. Bartolome C. Cabangbang uttered slanderous remarks on the floor of Congress against Rep. Osmeña, Jr. and the gallery; Rep. Ombra Amilbangsa stated on the floor on July 12, 1960 after the Pendatun Committee was created that "Garcia is the dirtiest official in history"; Rep. Durano and Cortez grappled on the floor of Congress and engaged in fisticuffs; and yet in all these occasions the House did not take any action against either of them for "disorderly behavior."

> tion. As a result the privilege became absolute, conditioned only by the fact that what is said or spoken be done in the course of legislative proceedings." [204]

But as illustrated in the *Osmeña* case the absolute nature of the privilege can be so abused as to be a vehicle for sheer vilification and a convenient instrument for character assassination.[205] The same problem posed therefore is whether the privilege should be abolished or curtailed by law. The abolition of the privilege is unthinkable, considering the significance of the right and the inherent necessity it bears upon an effective representative form of government. A curtailment of the immunity so as to expressly except cases of slander, calumny and defamatory remarks would however entail a constitutional amendment. And if this is adopted, there will be established a qualified parliamentary freedom of speech similar to the immunity provided in the German and Portuguese constitutions.[206] Such a step deserves positive consideration, but no attempt of this nature has been made in the Philippines although there was such a move a few years ago in the United States which did not gain ground. An amendment was also proposed by Senator Lester C. Hunt of Wyoming to amend the Federal Torts Claim Act [207] in order to give a person defamed by any member of Congress the right to sue the government.[208] This proposal also has not been accepted and it is hardly possible it will prosper because this would subject the State to damages for unparliamentary conduct of legislators and the use of public money for such purpose is highly questionable.

Or, should not the courts break away from the iron-clad application of the theory of separation of powers, and by judicial supremacy [209] establish a conditional parliamentary immunity from words spoken in Congress so as to extend only to freedom from suit, civil or criminal, the utterances qua legislator when the public good is served thereby, and "not condone a carte blanche immunity?" [210]

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[204] *The Immunity of Congressional Speech—Its Origin, Meaning and Scope*, 99 UNIV. OF PA. L. REV. 960, 966 (1951).

[205] Owen Lattimore who was charged by Senator Joseph R. McCarthy of Wisconsin as a top Russian espionage agent in the United States while serving with the State Department, referred to the abuse of the privilege as "ordeal by slander" in his book bearing same title (1950); another name given is "assassination by guesswork" by Weeks, ATLANTIC MONTHLY 73-74 (September, 1950).

[206] Quoted at pp. 23-24, *ibid.*

[207] FEDERAL TORTS CLAIM ACT sec. 1346b, 28 U.S.C.

[208] Mentioned in the article of Professor Yankwich, *supra*.

[209] Doctrine of Judicial Review established in Marbury v. Madison, 1 Cranch 137, 2 L. ed. 60 (1803); Angara v. Electoral Commission, 63 Phil. 139 (1936); People v. Vera, 65 Phil. 57 (1937).

[210] Lincoln Bldg. Associates v. Barr, *op. cit., supra* note 179.

The criterion for the courts in such cases would be that expressed by Professor Oliver P. Field, thus:

> "x x x It is believed that perfect freedom of debate is only essential to effective representative government in so far as it brings forth searching and critical analysis plus such information as may be valuable in the handling of legislative business. It can hardly be argued that legislative business is aided in any way by the making of malicious statements. Malice can scarcely be deemed a guarantee of that free legislative action which constitutional provision on this point were designed to attain. The purpose of the privilege is that there is no reason for granting an absolute immunity to the legislator. A conditional privilege allows the legislator all the freedom of debate which is of any benefit to representative government, and the interest of the individual in preserving his reputation is of sufficient importance to warrant the doctrine of a conditional privilege, that he may retain some measure of protection from defamation by a legislator, for it sometimes happens that legislators do abuse the privilege of exemption from action for defamation for speeches made in the legislature." [211]

Indeed, under a conditional privilege the boundaries of which will be within the competence of the courts to judge, the role of legislative statesmanship would be more emphasized and the excesses of legislative privileges would be more restrained.

Whether parliamentary freedom of speech be absolute or qualified, however, the public is not at all without any responsibility. Public opinion in a democracy is an enormous force that influences the conduct of officials and the pattern of civilized behavior. Since the courts cannot give relief to many forms of traduces under the guise of absolute legislative immunity; to denounce abuses of this precious parliamentary privilege, a militant and an enlightened public opinion could be the ultimate bar for decision.[212]

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[211] Oliver P. Field, *The Constitutional Limitations of Legislators*, *op. cit.*, *supra* note 8.

[212] Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316, 423, 4 L. ed. 579, 605 (1818), said: "For the removal of unwise laws from the statute books lies not to the courts but to the ballot and to the processes of democratic government." This might as well apply to any abuse or arbitrary act of Congress or the members thereof which are not justiciable. Associate Justice Prettyman in Barsky v. United States, *op. cit.*, *supra* note 120, has also stated that the remedy for unseemly conduct, if any, in Congress is for Congress, or *for* the *people*, as it is political and not judicial.