POLITICAL LAW — PART ONE

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1967 will be remembered for significant developments in constitutional law. It was the year when the legitimacy of Congress itself was put in issue[1] and for the first time the people rejected in a clear and unequivocal manner two proposals for constitutional amendments.[2] It was the year when the Supreme Court abandoned the application of the *pari-delicto* rule to transfers of land made in violation of the constitution[3]; reconsidered the self-limiting rule it followed in *Mabanag v. Lopez Vito*[4] with respect to constitutional amendments proposed by Congress[5]; and reversed the rule it laid down in *Moncado v. People's Court*[6] finally adopting the exclusionary rule in cases of illegally seized evidence.[7] It was also the year when the Senate Electoral Tribunal decided to disqualify three members of the Senate for overspending in their election campaign.[8] During the same pe-

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[1] The challenge directed against the legitimacy of Congress was first articulated in V. G. Sinco. *Should Proposals for Constitutional Amendments Be Lawfully Considered?* Manila Times, October 21, 22, 1967, p. 6-A. Dr. Sinco's thesis is as follows:

"The present organization of Congress lacks the elements of legitimacy because it is in open, direct, and willful violation of the Constitution. It is so for many years now in plain defiance of Article VI, sec. 5 of the constitution of the Philippines which reads: . . . 'The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise."

"There has been no apportionment made since the last census in 1960 or about seven years ago. This provision just quoted is mandatory... This is an imperative duty of Congress. And when must it be performed? 'Within three years after the return of every enumeration' or census. Congress has knowingly and willfully failed to do this duty. This is a fact of public notice.

"A Congress organized in disregard of the mandatory provision of the Constitution is not a Congress at all, not a constitutional Congress. It has no right to propose amendments to the Constitution and to call an election to ratify them."

[2] Pursuant to Republic Act 4913, Congress in joint session canvassed the returns and certified the result of the plebiscite at which the proposals were submitted to the people for ratification. The votes cast were better than 4:1 against the two proposals.

[3] Philippine Banking Corporation v. Lui She, G.R. No. 17587, Sept. 12, 1967.

[4] 78 Phil. 1 (1947).

[5] Gonzales v. Commission on Elections, G.R. No. 28196, Nov. 9, 1967.

[6] Moncado v. People's Court, 80 Phil. 1 (1948).

[7] Stonehill v. Diokno, G.R. No. 19550, June 19, 1967.

[8] Hidalgo v. Manglapus, Senate Electoral Tribunal, Electoral Case No. 5 (1967).

riod a legislative measure extending more autonomous powers to local governments was vetoed by the President and a more moderate measure was substituted.[9]

As in the last year's survey the decisions and legislations in the field of political law will be the subject of a two-part survey. This article will be limited to constitutional law and local governments.

CONSTITUTIONAL LAW

STANDING TO SUE, IMMUNITY OF STATE FROM SUIT

During the year under review the Supreme Court continued to take a liberal view on the sufficiency of the legal interest of citizens and taxpayers to contest the constitutionality of acts of Congress. Thus, the constitutionality of two resolutions proposing amendments to the constitution and the act implementing it were challenged by a private citizen who instituted a class suit on behalf of all citizens, taxpayers, and voters[10] and by a civic, non-profit organization.[11] In both actions the Solicitor General's opposition to the petitioners' standing to sue was perfunctory. In *Lidasan v. Commission on Elections*[12] the Supreme Court held that a citizen, taxpayer, and voter of a community affected by a statute creating a new municipality had substantial legal interest to see that the law did not dismember his place of residence. Dealing specifically with the right of the petitioner to challenge the validity of the statute, the court said:

> "Petitioner is a qualified voter. He expects to vote in the 1967 elections. His right to vote in his own barrio before it was annexed to a new town is affected. He may not want, as is the case here, to vote in a town different from his actual residence. He may not desire to be considered a part of hitherto different communities which are formed into the new town; he may prefer to remain in the place where he is and as it was constituted, and continue to enjoy the rights and benefits he

[9] The bill vetoed was S. No. 1, House No. 3100 approved by both Houses of the Sixth Congress during its second session in 1967. The substitute measure later became Rep. Act No. 5185 approved during the fifth special session of the same Congress began on July 17, 1967. It finally passed both Houses on Aug. 11 and was signed by the President on Sept. 12.

[10] *Supra*, note 5.

[11] Philippine Constitutional Association of the Philippines v. Commission on Elections, G.R. No. 28224, Nov. 9, 1967.

[12] G.R. No. 28089, Oct. 25, 1967.

> acquired therein. He may not even know the candidates of the new town; he may express a lack of desire to vote for anyone of them; he may feel that his vote should be cast for the officials in the town before dismemberment. Since by constitutional direction the purpose of a bill must be shown in its title for the benefit, amongst others, of the community affected thereby, it stand to reason to say that when the constitutional right to vote on the part of any citizen of that community is affected, he may become a suitor to challenge the constitutionality of the Act passed by Congress."

Actions brought to restrain an organ of government from carrying out the provisions of legislative enactments are in reality suits against the state. But the well recognized principle in this jurisdiction that the state may not be sued without its consent has not proved an obstacle in the now numerous cases instituted by taxpayers challenging the constitutionality of legislative[13] as well as executive acts.[14] Because the government has not chosen to hide behind the shield of state immunity, burning constitutional issues have been openly litigated and passed upon by the Supreme Court as the ultimate arbiter of questions of law under the constitution.

The principle of state immunity from suit has usually been invoked in cases seeking to make the state liable on the basis of a contract or tort. In the 1967 cases in which the principle was pleaded or utilized, it was not for the purpose of escaping liability. It was to compel the claimants to follow the procedure prescribed in Commonwealth Act No. 327. In numerous cases brought to recover for loss, damage, misdelivery or nondelivery of goods shipped to the Philippines and discharged into the custody of the Customs Arrastre Service,[15] the Supreme Court

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[13] Macias v. Commission on Elections, G.R. No. 18684, Sept. 14, 1961; Pascual v. Secretary of Public Works and Communications, G.R. No. 10405, Dec. 29, 1960.

[14] Rodriguez v. Gella, 92 Phil. 603 (1953); Gonzalez v. Hechanova, G.R. No. 21897, Oct. 22, 1963.

[15] North British & Mercantile Insurance Co., Ltd., Isthmian Lines, Inc. v. International Harvester Macleod, Inc., G.R. No. 26237, July 10, 1967; Insurance Co. of North America v. Republic, G.R. No. 26532, July 10, 1967; Insurance Co. of North America v. Republic, G.R. No. 25662, July 21, 1967; Insurance Co. of North America v. Republic, G.R. No. 24520, July 11, 1967; Manila Electric Co. v. Customs Arrastre Service and/or Bureau of Customs and/or Republic of the Philippines, G.R. No. 25512, July 24, 1967; The Shell Refining Co. (Phil.) Inc., v. Manila Port Service, G.R. No. 24930, July 31, 1967; The American Insurance Company v. Macondray & Co., Inc., G.R. No. 24031, Aug. 19, 1967; Insurance Company of North America v. Republic, G.R. No. 26532, Aug. 30, 1967; Insurance Company of North America v. Republic, G.R. No. 27515, Sept. 5, 1967; Insurance Company of North America v. Republic

patiently but unwaveringly repeated the rule in *Mobile Philippines Explorations, Inc. v. Customs Arrastre Service,*[16] to the effect that: (1) the Bureau of Customs and the Customs Arrastre Service have neither juridical personality nor authority to sue or be sued, apart from the national government, (2) while arrastre service is a proprietary function, it is a necessary incident to the primary governmental job of collecting taxes, and (3) a claim arising from the performance of the arrastre service is a claim against the state itself which may not be sued without its consent. (4) Consent to be sued on the basis of money claims has been given under the conditions of Commonwealth Act No. 327 and the claimants are bound to follow those conditions.

THE O'GORMAN RULE IN CONSTITUTIONAL ADJUDICATION

A party raising the question of unconstitutionality has the burden of proving that the challenged treaty, statute, or ordinance violates the constitution. Not only must he overcome the presumption of constitutionality but he must also show that the controversy cannot be decided unless the constitutional question is resolved. And in case of a treaty or statute he has to obtain the vote of an extraordinary 2/3 majority of the Supreme Court.[17] In 1967 the constitutionality of four statutes,[18] two resolutions

of the Philippines, G.R. No. 27516, Oct. 19, 1967; Champion Auto Supply Co. v. Bureau of Customs, G.R. No. 25162, Oct. 23, 1967; Hartford Fire Insurance Co. v. Customs Arrastre Service, G.R. No. 25362, Oct. 23, 1967; Insurance Company of North America v. Republic, G.R. No. 25477, Oct. 23, 1967; American Insurance Co. v. Republic, G.R. No. 25478, Oct. 23, 1967; American Insurance Company v. Republic, G.R. No. 25695, Oct. 23, 1967; Fireman's Fund Insurance Company v. Republic, G.R. No. 25784, Oct. 23, 1967; Fireman's Fund Insurance Company v. Republic, G.R. No. 25844, Oct. 23, 1967; Insurance Company of America v. Republic, G.R. No. 25871, Oct. 23, 1967; Fireman's Fund Insurance Company v. Republic, G.R. No. 26618, Oct. 23, 1967; The Northern Assurance Company, Ltd. v. Republic of the Philippines, G.R. No. 27077, Oct. 23, 1967; Insurance Company of North America v. Warner, Barnes & Co., G.R. No. 24106, Oct. 31, 1967; Royal Insurance Co. v. American Pioneer Line, GR. No. 25323, Nov. 15, 1967; Hartford Fire Insurance Co., v. P.D. Marchessini & Co., G.R. No. 24544, Nov. 15, 1967; Home Insurance Co. v. United States Lines Co., G.R. No. 25593, Nov. 15, 1967; Atlantic Mutual Insurance Company v. Republic of the Philippines, G.R. No. 25663, Nov. 15, 1967; Insurance Company of North America v. Republic of the Philippines, G.R. No. 26794, Nov. 15, 1967; American Insurance Co. v. Republic of the Philippines, G.R. No. 25476, Nov. 15, 1967; Caltex (Philippines) Inc. v. Customs Arrastre Service, G.R. No. 26947, Dec. 26, 1967.

If the purpose of this avalanche of cases involving a settled point of law was to shake the Supreme Court into abandoning its stand in the Mobile case, that purpose failed. The Court could have been spared the trouble of deciding each case individually.

[16] G.R. No. 23139, Dec. 17, 1966.

[17] Const., Art. VIII, sec. 10.

[18] Republic Act Nos. 4913. 3137. 4790 and 2056. All except Republic Act No. 4790 were upheld.

proposing constitutional amendments[19] and one city ordinance[20] were contested. In only one case did the Supreme Court decide against constitutionality and this because on its face the statute complained of violated the constitutional restrictions regarding the title and subject matter of bills.[21] In one case the challenge failed because the necessary 2/3 majority was not obtained although 6 of the 10 members of the Supreme Court voted to invalidate the statute;[22] in the two other cases, the constitutional objections against the statute were held unfounded.[23]

In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor*[24] the Supreme Court through Mr. Justice Fernando laid emphasis on the procedural aspect of constitutional adjudication and applied the O'Gorman rule derived from an opinion of Justice Brandeis in which the latter stated:[25]

> "The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, *the presumption of constitutionality must prevail in the absence of some factual foundation on record for overthrowing the statute.*" (Italics supplied)

The petitioners had invoked the due process of law clause and challenged the constitutionality of an ordinance of the City of Manila regulating hotels and motels and requiring among other things that guests and transients shall fill up a registration form in a lobby open at all times to public view. The case was submitted to the lower court for decision on a question of law and without evidence. The lower court held the ordinance unconstitutional. On appeal the Supreme Court reversed on the ground that the petitioners had failed to establish a factual foundation for a declaration of unconstitutionality. In a motion

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[19] Joint Resolutions of Both Houses, Nos. 1 and 3 adopted on March 16, 1967 and proposing amendments to the Constitution.

[20] Manila Ordinance No. 4760, June 14, 1963.

[21] Lidasan v. Commissioner on Elections, G.R. No. 28089, Oct. 25, 1967.

[22] Gonzales v. Commission on Elections, *supra*, note. 5.

[23] Rafael v. The Embroidery and Apparel Control Board, G.R. No. 19978, Sept. 29, 1967; Santos v. Secretary of Public Works and Communications, G.R. No. 16949, March 18, 1967.

[24] G.R. No. 24693, July 1967, The Resolution on motion for reconsideration of Oct. 23, 1967 amplifies the courts view on the O'Gorman rule.

[25] O'Gorman & Young v. Hartford Fire Insurance Co., 282 U.S. 251, 51 S. Ct.

for reconsideration the petitioners objected to the application of the O'Gorman rule but Justice Fernando with a comprehensive citation of authorities demonstrated the weight that should be accorded to the rule, without discounting the possibility that in certain cases, as those involving the freedom of the mind, a rigid insistence on the requirement may be dispensed with.

CONSTITUTIONAL AMENDMENTS AND CONGRESS

On March 16, 1967 the Senate and the House of Representatives met in joint session and by a vote of three fourths of all the members of each house voting separately[26] proposed to amend the constitution by (1) raising the maximum number of seats in the House of Representatives from 120 to 180 and immediately apportioning 160 seats[27] and (2) modifying the constitutional prohibition regarding the holding of any other office or employment in the government by any Senator or member of the House of Representatives without forfeiting his seat, and allowing him to become a delegate to the constitutional convention.[28] A third resolution was adopted on the same day for the holding of a constitutional convention to propose amendments to the constitution.[29] Congress adopted two statutes for the implementation of the resolutions: Republic Act No. 4913 provided for a plebiscite at which the two amendments directly proposed by Congress were to be submitted for ratification and Republic Act No. 4914[30] providing for the election of delegates and the holding of a constitutional convention. No act of Congress since the proposed parity amendment in 1947 aroused as much controversy as the two proposals submitted for ratification during the November 1967 election. Although the resolutions were adopted in March and the implementing statutes were approved in June, there was not much public discussion of the proposals until September and it was not until October 1967 that opposition to the proposals

[26] The amending process is set forth in Article XV of the Constitution which provides: The Congress in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to this Constitution or call a convention for that purpose. Such amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

[27] Resolution No. 1.

[28] Resolution No. 3.

[29] Resolution No. 2.

[30] Approved June 16, 1967.

began to mount. By then there was a general feeling that the time left before the election was insufficient to inform the people of the proposed amendments.

A determined campaign for the rejection of the two proposals was carried on in the press, the radio, television, in student rallies and elsewhere. As in other controversies in the past,[31] the issues were finally brought before the Supreme Court. Late in October 1967 two separate cases challenging the validity of the resolutions proposing the amendments and the constitutionality of Republic Act No. 4913 were instituted. *Gonzales v. Commission on Elections*[32] (Comelec for short) was an original action in the Supreme Court for prohibition with preliminary injunction. *Philippine Constitutional Association of the Philippines v. Commission on Elections*[33] was originally brought by the petitioner (to be referred to here as PHILCONSA) before the Comelec and elevated to the Supreme Court on a petition for review on certiorari of the Comelec order dismissing the petition.[34]

The two cases were submitted for joint decision on identical issues. The petitioners sought to restrain (a) the Comelec from enforcing Republic Act No. 4913 or from performing any act that would result in the holding of a plebiscite for the ratification of the two proposals for amendment, (b) the Director of Printing from printing the ballots, and (c) the Auditor General from passing in audit any disbursement from the appropriation made in Republic Act No. 4913.

The Solicitor General raised the preliminary issue of jurisdiction over the subject matter of the cases arguing on authority of *Mabanag v. Lopez Vito*[35] that the issue submitted was a political one.

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[31] The controversy over the parity amendment was brought to court in the case of Mabanag v. Lopez Vito, *supra*, note 4; the controversies over the President's exercise of emergency powers gave rise to Araneta v. Dinglasan and its companion cases, 84 Phil. 368 (1949) and Rodriguez v. Gella, 93 Phil. 603; the controversy over the President's midnight appointments spawned two celebrated cases, namely, Aytona v. Castillo, G.R. No. 19313, Jan. 19, 1962 and Guevara v. Inocentes G.R. No. 25577, Feb. 16, 1966 not to mention the numerous other cases involving the same issue.

[32] *supra*, note 5.

[33] G.R. No. 28224, Nov. 9, 1967.

[34] The Comelec dismissed the case on October 20, 1967 and it was brought to the Supreme Court on Oct. 21, 1967.

[35] *supra*, note 4.

To settle this point a unanimous court held:

"Since, when proposing, as a constituent assembly, amendments to the Constitution, the members of Congress derive their authority from the Fundamental Law, it follows necessarily, that they do not have the final say on whether or not their acts are within or beyond constitutional limits. Otherwise they could brush aside and set the same at naught contrary to the basic tenet that ours is a government of laws, not of men, and to the rigid nature of our Constitution. Such rigidity is stressed by the fact, that the Constitution expressly confers upon the Supreme Court the power to declare a treaty unconstitutional, despite the eminently political character of the treaty-making power.

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

Proceeding to consider the case on the merits, 6 justices voted to declare Republic Act No. 4913 unconstitutional; 4 justices voted to uphold it. Since the necessary 8 votes for a declaration of unconstitutionality was not reached the vote of 4 prevailed.

The petitioners raised four issues:

"1. That the Members of Congress who approved the proposed amendments are at best *de facto* Congressmen.

"2. That Congress may adopt either one of two ways to amend the constitution, (a) propose amendments or (b) call a convention to propose the amendments. It may not avail of both ways, that is, propose amendments and call a convention, at the same time.

"3. The election in which proposals for amending the Constitution shall be submitted for ratification shall be at a special election, not a general election, in which officials for national and local governments will be chosen.

"4. The spirit of the Constitution demands that the election, in which the proposals are submitted to the people for ratification, must be held under such conditions, which allegedly do not exist here, as to give the people a reasonable opportunity to have a fair grasp of the nature and implications of said amendments."

Legality of Congress and the Legal Status of Congressmen.

The petitioners argued that because Congress had failed to make an apportionment of the seats in the House of Representatives within three years of the completion of the 1960 census as

the constitution requires, the Congress of the Philippines and/or the election of its members became illegal. As a result Congress became a *de facto* Congress and its Members became *de facto* Congressmen. As a further result, the disputed resolutions proposing amendments and Republic Act No. 4913 were null and void.

The issues raised are of more than passing interest in constitutional law and they are raised for the first time in this jurisdiction. For this reason the different opinions registered in the case will be given in detail.

To support the first point, the petitioners adopted the following line of reasoning: *First.* The constitution imposes on Congress the mandatory duty to make an apportionment within three years after the return of every enumeration. *Second.* The last enumeration took place in 1960 and no apportionment was made within three years thereof. *Third.* By reason of its failure to make the apportionment which the constitution requires, Congress became an unconstitutional Congress (or what represents a retreat from this position, a *de facto* Congress and its members became *de facto Congressmen.*[86]) *Fourth.* As a consequence, the acts of an illegal Congress, i.e., the resolutions proposing amendments to the constitution and Republic Act No. 4913, are null and void.

A unanimous court held that the objections based on the first issue are untenable. The opinion of Chief Justice Concepcion explains in detail the position of the Supreme Court on the issue of the legitimacy of Congress, by pointing out that Congress did pass an apportionment act after the 1960 census but the Supreme Court declared the law unconstitutional. Furthermore, the failure to make a valid apportionment after completion of the 1960 census did not operate to reduce the Congress to an "unconstitutional Congress" because the Constitution itself envisions the effect of the omission and provides:

> ". . . Until such apportionment shall have been made, the House of Representatives shall have the same number as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly district . . ."

According to the Court the provision necessarily implies that Congress shall *continue* to function with the representative dis-

[86] Sinco, *supra*, note 1 where he took the position that the *de facto* doctrine is not applicable to the case.

tricts existing at the expiration of the period for making an apportionment. The court rejected the petitioners' argument that the provision referred only to the election of 1935 by saying that there was no enumeration in 1935 and nobody could foretell when a census would be made. When the constitution was amended in 1940 and a bicameral legislature was established, the original provision regarding apportionment was retained. Thus, per the Court the events contemporaneous with the framing of the constitution in 1935 and its amendment in 1940 indicate that the provision on apportionment was to be applied to conditions obtaining after the elections in 1935 and 1938.

What can be said about the provision on which the court falls back in order to uphold the legitimacy of Congress is that at best, it is a stop-gap provision. The framers of the constitution and the people who ratified it could not have foreseen that the legislature on which it placed the mandatory duty to make an apportionment within three years after each enumeration would not make a valid reapportionment after thirty years from the adoption of the original constitution and after the completion of two enumerations.[37] The duty to make an apportionment within the three years after an enumeration being mandatory, can Congress be compelled to perform its duty? The Court does not say.

The next link in the petitioners' chain of reasoning is that for failure of Congress to perform its mandatory duty, it became an unconstitutional Congress and its members became *de facto* officers. Under this theory, the illegal or *de facto* status would begin late in 1963. But the Court said that the petitioners did not allege that the expiration of the three year period without reapportionment had the effect of abrogating the legal provisions creating Congress nor that the term of office of the members automatically expired upon the lapse of the three year period. Besides, the provisions of the election laws were not repealed and general elections were held in 1960. The court could not see how the present members of Congress could be regarded as *de facto* officers, for failure of their predecessors to make reapportionment. It pointed out that the loss of office is not automatic and even in cases where a constitutional officer

[37] There was a census in 1948 and another was taken in 1960.

is impeached, the title to the office remains until a judgment of conviction.

Taking up the argument that the members of Congress are *de facto* officers, the court pointed out that the main reason for the existence of the *de facto* doctrine is to protect the rights of third parties and the public interest. The court rejected the view that the disputed resolutions and Republic Act No. 4913 are not complete. Furthermore, the acts of *de facto* officers may not be attacked collaterally.

By way of comment it can be said that this position taken by a unanimous court on the legitimacy of Congress was to be expected. While the Court was prepared to review the act of Congress sitting as a constituent assembly, it was not prepared to go to the extent of declaring that a coordinate department of the government was an illegal body. As Senator Tolentino argued before the Court such a finding "would render inoperational the legislative department." It would have produced a serious dislocation in the governmental set up.

Manner of Proposing Amendments

The *amicus curiae* maintained that Congress may either propose amendments to the constitution or call a convention for that purpose, but it cannot do *both* at the same time. The opinion which prevailed held that neither the constitution nor its history negates the authority of different Congresses to pass the resolutions, or of the Congress to pass the resolutions in different sessions or different days of the same congressional session, or to adopt the resolutions on the same day. The argument was taken to be directed to the *wisdom* of the action taken by Congress not to its ***authority*** to take it.

Submission of Amendments for Ratification

The third issue was whether the constitutional amendments could be submitted for ratification in a general election. The opinion which prevailed was that there is nothing in the constitution to indicate that the term election should be understood to mean "special election." The circumstance that three previous proposals for amendment were submitted to the people for ratification in special elections merely shows that Congress deemed it best to do so. It does not mean that Congress has no

authority to submit amendment proposals for ratification at a general election.

The Court next took up the question of whether the submission of the contested amendments to the people during a general election violates the spirit of the constitution.

The proposals were approved on March 16, 1967 and the elections were to be held on November 14, 1967 — the citizens had practically 8 months to be informed of the amendments in question. The law required publication in three consecutive issues of the Official Gazette at least 20 days prior to the elections. It required a printed copy posted in a conspicuous place in every municipality, city and provincial office; with three copies at least posted in the polling place. When practicable, copies in the native language, were to be kept in each polling place and copies in English, Spanish, and whenever practicable, in the principal native languages were to be made available for distribution by the Commission. The resolutions were to be printed at the back of the ballots.

The Concepcion opinion said that it was not prepared to say that these were palpably inadequate to comply with the constitutional requirement on submission of the proposed amendment to the people.

The previous statutes providing for ratification of the constitution and the other amendments were examined and their provisions were found to be substantially the same as that of Republic Act No. 4913. They fairly apprised the people of the substance of the proposals.

Concurring Opinions

Each of the three other justices who concurred with the Chief Justice registered a separate concurring opinion. Thus, Mr. Justice Makalintal observed that the provisions of the law on the manner of submitting the amendment proposals for ratification were sufficient. The objection to the law was that there were so many issues at stake in the general elections and the electorate could not give its attention entirely to the proposals, hence, to the objectors, this was equivalent to a failure to properly submit the proposed amendments for ratification. According to him this was a defect not intrinsic in the law but in its

implementation and cannot be a basis for striking down the act as unconstitutional. Furthermore, a law is declared unconstitutional only when there is an irreconcilable conflict between its provisions and the constitution.

Justice Bengzon took up the other points raised by petitioner Gonzales, by saying (1) as did Justice Makalintal that the constitution does not specify that the submission of proposals for amendment should only be made in a special election (2) that Republic Act 4913 did not need a 3/4 vote in a joint session of Congress since the constitution requires that extraordinary majority and the joint session only in proposing amendments, not in the law providing for submission for ratification and (3) that there is no violation of the substantive due process requirement of the constitution because the act gives every voter the opportunity to be informed of the proposals and access to the provisions of the constitution sought to be amended.

The Six Who Lost to Four

Mr. Justice Sanchez with five other justices concurring voted to declare Republic Act 4913 unconstitutional. The main thrust of their objection to the act was what they considered the inadequacy of the provision for informing the people of the proposals for amendment. In their view "what the constitution in effect directs is that the Government in submitting an amendment for ratification should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification." To them the issue in this case was:

> "If the people are not sufficiently informed of the amendments to be voted upon, to conscientiously deliberate thereon, to express their will in a genuine manner, can it be said that in accordance with the constitutional mandate the amendments are submitted to the people for ratification?"

Their answer after examining closely the provisions of the act was in the negative. Because of the inadequacy of this provision Justice Sanchez and the justices who concurred with him concluded that there was no proper submission of the proposed amendments to the people. To show the inadequacy of the provision for information they pointed out:

> "First, the Official Gazette is not widely read. It does not reach the barrios. And even if it reaches the barrios is it

> available to all? And if it is, would all understand English? Second, it should be conceded that many citizens, especially those in the outlying barrios, do not go to the municipal, city and/or provincial buildings except on special occasions like paying taxes or responding to court summonses. And if they do, will they notice the printed amendments posted on the bulletin board? And if they do notice, such copy again is in English (sample submitted to this Court by the Solicitor General) for, anyway, the statute does not require that it be in any other language or dialect. Third, it would not help any if at least five copies are kept in the polling place for examination by qualified electors during election day. As petitioner puts it, voting time is not a study time. And then, who can enter the polling place except those who are about to vote? Fourth, copies in the principal native language shall be kept in each polling place. But this is not, as Section 2 itself implies, in the nature of a command because such copies shall be kept only "when practicable" and "as may be determined by the Commission on Elections." Fifth, it is true that the Comelec is directed to make available copies of such amendments in English, Spanish or whenever practicable, in the principal native languages, for free distribution. However, Comelec is not required to actively distribute them to the people. This is significant as to people in the provinces especially those in the far-flung barrios who are completely unmindful of the discussions that go on now and then in the cities and centers of population on the merits and demerits of the amendments. Rather, Comelec, in this case, is but a passive agency which may hold copies available but which copies may not be distributed at all. Finally, it is of common knowledge that Comelec has more than its hands full in these pre-election days. They cannot possibly make extensive distribution."

Another feature of Republic Act No. 4913 to which the six justices objected was that it provided for the submission of the two proposals during the election of local and national officials. The uniform practice in the past was to submit proposals for ratification in special election. As Justice J. B. L. Reyes pointed out it could not have been intended by the framers that amendments should be submitted and ratified at an election where the people's attention was diverted by other extraneous issues, such as the choice of local and national officials. While the justices whose opinion prevailed agreed that it would have been better to hold the plebiscite separately from an election for local and national officials, they believed that the question was addressed to the wisdom of the act, not to the lack of authority of Congress.

Mr. Justice Fernando registered a separate opinion. He voted to uphold the law but limited his observations to the reversal of the *Mabanag v. Lopez Vito* case stating that the major opinion of the late Justice Tuason represented a view that "was itself a product of the times" and the practice of invariably according "uncritical acceptance" of American Supreme Court decisions on constitutional questions to which, he observed with approval, there is less propensity now.

Epilogue to the Case

The opponents of the proposed amendments utilized every available means to defeat the proposals. The six justices who voted to strike down Republic Act No. 4913 emphasized the inadequacy of its provision for dissemination. The provisions may indeed have been inadequate but the proposed amendments were in fact effectively circulated and widely discussed, thanks to the various media of communication, the spirited campaign waged by civic groups and militant citizens, and the maturity of the Filipino voter who made it his business to be informed. When the final tally of the plebiscite was released the votes registered were as follows:[38]

	YES	NO
On the first proposal	737,937	3,299,485
On the second proposal	652,127	3,287,879

The decision in the case and the result of the plebiscite well illustrate the oft quoted view that in a government of laws "there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage." While the Supreme Court in the case had set aside its rule of self limitation and had inquired into the question of whether Congress had followed the constitutional requirements for proposing amendments to the constitution, the Court refused to substitute its judgment for that of Congress in determining the adequacy of the means adopted to inform the voters of the proposal. The ultimate judgment on the pro-

[38] Manila Times, March 2, 1968.

posal was made by the people themselves.[39] This is as it should be.

LEGISLATIVE POWER TO CREATE PUBLIC OFFICE

The constitutionality of Republic Act No. 3137 creating an Embroidery and Apparel Control Board and designating certain officials as members was questioned on three counts in *Rafael v. the Embroidery and Apparel Control Board.*[40] The petitioner objected to section 2 of the Act which provides that the Board shall be composed of "(1) a representative from the Bureau of Customs to act as Chairman, to be designated by the Secretary of Finance; (2) a representative from the Central Bank to be designated by its Governor; (3) a representative from the Department of Commerce and Industry to be designated by the Secretary of Commerce and Industry; (4) a representative from the National Economic Council to be designated by its Chairman; (5) a representative from the private sector coming from the Association of Embroidery and Apparel Exporters of the Philippines" on the ground that it encroaches upon the President's power of appointment.

In support of the first objection the petitioner argued that while Congress may create an office it cannot specify who should be appointed to it. By prescribing who should be the Chairman and members of the Board, Congress had in effect declared who should be appointed. The Supreme Court speaking through Mr. Justice Makalintal found this argument untenable, because with the exception of the representative from the private sector all the other members of the board sit *ex officio*. They are not given new appointments, they are merely designated to perform additional functions as representatives of departments and offices whose functions have something to do with embroidery and apparel products. There is therefore no attempt to deprive the President of his appointing power.

The second objection was that the law amounted to class legislation and deprived the plaintiff of equal protection by making express preference in the appointment of a representative from a particular private organization. The Court found this

[39] For a critique on the decision see Sinco, V. G., *Comments on Amendment Proposals.* The Manila Times, Dec. 12, 1967, 7-B; Dec. 13, 1967, 7-A

[40] *Supra,* note 23.

objection equally without merit saying that the Association of Embroidery and Apparel Exporters of the Philippines was singled out by the law because it was the dominant organization in the field. However, the Act applied to members as well as to non-members.

Finally, the petitioner objected that the provision of the act giving the Board power to fix a special assessment not exceeding one per cent of value of the labor, processing or finishing costs, did not provide sufficient standards, hence was an undue delegation of legislative powers. Taking the act as a whole and relating its various provisions, the Court held that the law set reasonable standards, namely: (a) that such special assessment be levied on manufactured goods intended to be removed for exportation; and (b) that such special assessment should not exceed one per cent of the value of the labor, producing or finishing costs realized from the processed or finished goods exported.

SUBJECT AND TITLE OF BILLS

In *Lidasan v. Commission on Elections*[41] the Supreme Court at the instance of a citizen, taxpayer, and voter struck down Republic Act No. 4790 entitled, "An Act Creating the Municipality of Dianaton in the Province of Lanao del Sur" because it contravenes the constitutional requirement that "no bill which may be enacted into a law shall embrace more than one subject which shall be expressed in the title of the bill."[42] As the title of the bill indicates, the new municipality was to be in the province of Lanao del Sur and in section 1 the measure enumerates by name 21 barrios to be detached purportedly from two municipalities in Lanao del Sur to make up the new political subdivision.[43] Subsequently it was discovered that only 9 of the bar-

[41] *Supra*, note 21.

[42] Constitution, Art. VI, sec. 21 (1).

[43] "Section 1. Barrios Togaig, Madalum, Bayanga, Langkong, Sarakan, Kat-bo, Digakapan, Magabo, Tabangao, Tiongko, Colodan. Kabamakawan, Kapatangan, Bongabong, Aipang, Dagawon, Bakikis, Bungabung, Losain, Matimos and Magolatung, in the Municipalities of Butig and Balabagan, Province of Lanao del Sur are separated from said municipalities and constituted into a distinct and independent municipality of the same province to be known as the Municipality of Dianaton, Province of Lanao del Sur. The seat of the government of the new municipality shall be in Tagaig."

Actually the barrios of Tagaig and Madalum are in the municipality of Buldon, Province of Cotabato and the barrios of Bayanga, Langkong, Sarakan, Kat-bo, Digakapan, Magabo, Tabangao, Tiongko, Colodon, and Kabamakawa are in the municipality of Parang, also in Cotabato.

rios were in fact in the province of Lanao del Sur, the 12 others being in two municipalities in the province of Cotabato.

The Commission on Elections took steps to implement the law for election purposes and continued to do so even after the Office of the President recommended that the operation of the statute be suspended until "clarified by correcting legislation." This triggered the present action contesting the constitutionality of Republic Act No. 4790.

The Supreme Court declared the law unconstitutional. The Court held that the title of the act was misleading because while it mentions only the creation of a new municipality in the province of Lanao del Sur it actually has a "two-pronged" purpose: (1) It creates a new municipality purportedly from twenty-one barrios in two municipalities of Lanao del Sur and (2) it dismembers two municipalities in Cotabato.

In this case the Supreme Court referred to the reasons for the constitutional restrictions on the subject and title of bills. They are to prevent the enactment of "hodge-podge or log-rolling" legislation and to forestall surprise or fraud upon the legislators and the public.[44] The disputed statute illustrates the second. Emphasizing the importance of expressing the subject in the title of a bill, the court observed that "the constitution does not exact of Congress the obligation to read during its deliberations the entire text of the bill."[45] Thus, the measure which later became Republic Act No. 4790 was never read in full in either house.[46]

The Court rejected the respondent's stance that the change in boundaries in the two provinces was "merely the incidental legal results of the definition of the boundaries," and need not be expressed in the title of the law. As authority for this, the respondent cited *Felwa v. Salas*[47] where the court held that although the title of the law creating three new provinces made

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[44] COOLEY, CONSTITUTIONAL LIMITATIONS 172 (6th ed.), as cited in SINCO, PHILIPPINE POLITICAL LAW, 225 (Eleventh Edition), (1962).

[45] The constitution requires that bills shall be printed and copies thereof in final form furnished its Members at least three calendar days prior to each passage, except when the President shall have certified to the necessity of its immediate enactment. (Article VI, sec. 21(2).) Members of Congress are expected to read the bills on their own.

[46] Being a bill of local application it originated in the House of Representatives.

[47] G.R. No. 26511, Oct. 29, 1966.

no mention of elective officials, the provision on these officials was incidental and manifestly germane to the subject i.e., the creation of the provinces. According to the court in the case at bar, the transfer of a sizeable portion of territory affects the area, the population and the income of a province and the "the lumping together of barrios in adjacent but separate provinces under one statute is neither a natural nor logical consequence of the creation of the new municipality."

Justice Fernando dissented. In his view the act dealt with one subject, the creation of a new municipality. He urged that the statute should not be narrowly construed so as to cripple proper legislation, but to free the statute from "insubstantial doubts" he was for expugning from it the barrios in the two Cotabato municipalities.[48]

EFFECTS OF DECLARATION OF UNCONSTITUTIONALITY

Did the declaration of unconstitutionality of Reorganization Plan No. 20-A completely erase all effects of the plan? In *Fernandez v. Cueva and Co.*,[49] the Supreme Court held that it did not. In this case the plaintiff filed a claim for salaries, commissions, and separation pay with Regional Office No. 4 of the Department of Labor on July 20, 1960 and while the case was pending he filed a similar complaint in a court of first instance on December 12, 1962. On June 30, 1961 Reorganization Plan No. 20-A, insofar as it gave original and exclusive jurisdiction over certain money claims to the regional offices of the Department of Labor, was declared unconstitutional.[50] The Department of Labor dismissed the plaintiff's claim in the regional office on January 16, 1963 and the defendant moved to dismiss the action filed in the court of first instance on the ground that the action had prescribed. The Supreme Court held that the action could still be maintained because the filing of the claim with the regional office suspended the running of the period of prescription. When the plaintiff filed his claim with the regional office he acted in accordance with the procedure prescribed by law. He could not have filed it with any court because Reorganization Plan No. 20-A gave the regional offices

[48] This is discussed fully under the subject of "Local Governments."
[49] G.R. No. 21114, Nov. 28, 1967.
[50] Corominas v. Labor Standards Commission G.R. No. 14837, June 20, 1961.

original and exclusive jurisdiction. The filing of the claim in the regional office had the attributes of a judicial demand.[51]

A declaration of unconstitutionality of certain provisions need not invalidate the whole statute or ordinance if the offending provisions are separable. To determine separability, the intention of the legislative has to be ascertained. Thus in the *Lidasan* case the Supreme Court considered the question of whether Congress would have created the new municipality with only 9 barrios. This is discussed in detail under the subject of "local governments" in this survey.

THE PRESIDENCY

The President's Alter Ego

There were fewer cases touching on the Presidency in 1967 and no questions of far reaching significance were raised. In *Lacson-Magallanes Co., Inc. v. Paño*[52] an inquiry was once again made on the position of the Executive Secretary *vis a vis* the President and *vis a vis* the secretaries of the various executive departments.[53] The specific issue in the case was: "May the Executive Secretary, acting by authority of the President reverse a decision of the Director of Lands that had been affirmed by the Secretary of Agriculture and Natural Resources?" The plaintiff argued that under the Public Land Act[54] the decisions of the Director of Lands "as to questions of fact shall be conclusive when approved" by the Secretary of Agriculture and Natural Resources. This is the rule which courts usually follow in the review of such decisions. This conclusive character of the findings of questions of fact, according to the Supreme Court, does not apply to the President because since he has the constitutional power of control over executive departments, he has authority to go over, confirm, modify, reverse, or otherwise substitute his judgment for that of the latter.[55]

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[51] This decision follows the rule laid down by the Supreme Court in Pacific Commercial Co. v. Aquino, G.R. No. 10274, Feb. 27, 1967 and other cases that the Moratorium Law, held unconstitutional in Rutter v. Esteban, 93 Phil. 68 (1953), suspended the period of prescription.

[52] G.R. No. 27811, Nov. 17, 1967.

[53] The same point was raised earlier in the case of Extensive Enterprises v. Sarbro & Co., G.R. No. 22383, May 16, 1966.

[54] Com. Act No. 141, sec. 4 (1936).

[55] Mondano v. Silvosa, 97 Phil. 143, 148 (1955).

The petitioner next questioned the constitutionality of the Executive Secretary's exercise of the Presidential power of control.

On this point the Court said:

> "It is correct to say that constitutional powers there are which the President must exercise in person. Not as correct, however, it is to say that the Chief Executive may not delegate to his Executive Secretary acts which the Constitution does not command that he perform in person. Reason is not wanting for this view. The President is not expected to perform in person all the multifarious executive and administrative functions. The Office of the Executive Secretary is an auxiliary unit which assists the President. The rule which had thus gained recognition is that 'under our constitutional set-up the Executive Secretary who acts for and in behalf and by authority of the President has an undisputed jurisdiction to affirm, modify or even reverse any order' that the Secretary of Agriculture and Natural Resources, including the Bureau of Lands may issue."

Once more the objection was raised that the Executive Secretary is equal in rank with the other department heads, who are *alter egos* of the President. Therefore, he cannot intrude into the zone of action of another department head.

In answer to this the Court stated:

> . . . "This argument betrays the lack of appreciation of the fact that where, as in this case the Executive Secretary acts 'by authority of the President', his decision is that of the President. Such decision is to be given full faith and credit by our courts. The assumed authority of the Executive Secretary is to be accepted. For, only the President may rightfully say that the Executive Secretary is not authorized to do so. Therefore, unless the action taken is 'disapproved or reprobated by the Chief Executive' that remains the act of the Chief Executive, and cannot be successfully assailed."

Mr. Justice Fernando concurring, pointed out that allowing appeals from decisions of the Secretary of Agriculture is not just "standard practice" but sound law implicit in the constitutional power of control. Referring to the Court's lack of receptiveness to a more expansive view of executive prerogative in the *Ang-angco v. Castillo* case,[56] he suggested that the case may have implications not in conformity with the broad grant of authority constitutionally conferred on the president.[57]

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[56] G.R. No. 17169, Nov. 30, 1963, 60 O.G. 665 (Feb. 1964).

[57] What was involved in the Ang-angco case was a disciplinary action taken against a member of the classified civil service. Art. XII of the Constitution, sec. 4 provides that those in the Civil Service shall

The Appointing Power

The petitioner in the *Rafael v. the Embroidery and Apparel Control Board*[58] contended that an act of Congress creating a board and designating executive officials as chairman and members of the board amounted to an encroachment on the President's appointing power. The Supreme Court, however, pointed out that the designations objected to did not amount to appointments, because the executive officials involved were only being given additional functions of a kind already related to the positions they were actually holding.

The Pardoning Power

In *Culanag v. Director of Prisons*[59] the Supreme Court reiterated an old rule that the power of the Chief Executive under section 64(i) of the Revised Administrative Code to arrest and reincarcerate any person who violates the conditions of his people,[60] stands even in the face of prosecution, conviction, and service of sentence for the violation.

The Supreme Court held in another case that grant of exclusive police supervision to local officials is not an encroachment on the power of the President to call out the armed forces to prevent lawless violence, invasion, insurrection or rebellion for any order coming from the president in the exercise of a power given by the Constitution prevails over any power granted to local authorities.[61]

CONSTITUTIONALLY PROTECTED RIGHTS

Due Process and Equal Protection

The substantive aspect of due process was invoked by the petitioners in the *Ermita-Malate Hotel and Motel Operators' Association*[62] case and its procedural aspect in *Makabingkil v. Yatco.*[63]

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only be removed or suspended for cause as provided by law. This binds the president to observe the causes and manner of proceeding against public officers which the law may prescribe. The Presidents' power of control is thus limited insofar as the civil service is concerned.

[58] *supra*, note 23.

[59] G.R. No. 27206, Aug. 26, 1967.

[60] Sales v. Director of Prisons, 87 Phil. 492 (1950).

[61] The City Mayor of Tacloban v. the Chief Philippine Constabulary, G.R. No. 20346, Oct. 31, 1967.

[62] *supra*, note 24.

[63] G.R. No. 23174, Sept. 18, 1967.

In the first case the petitioners alleged that the disputed ordinance of the City of Manila was unreasonable and the vagueness of some of its provisions curtailed their freedom of contract. As in past cases the court determined whether the private interests affected could outweigh the public interest sought to be protected by the exercise of the police power and whether the means adopted to accomplish it were fair and reasonable. As the court pointed out:

> "On the legislative organs of government, whether national or local, primarily rest the exercise of the police power . . . In view of the requirements of due process, equal protection and other applicable constitutional guarantees, however, the exercise of such police power insofar as it may affect the life, liberty or property of any person is subject to judicial inquiry. Where such exercise of police power may be construed as either capricious, whimsical, unjust or unreasonable denial of due process or a violation of any other applicable constitutional guarantee may call for correction by the court."

Dealing specifically with the questioned ordinance, the court cited its explanatory note which mentioned the alarming increase in the rate of prostitution, adultery and fornication in Manila traceable in great part to the existence of motels which "provide a necessary atmosphere for clandestine entry, presence and exit." The challenged ordinance aimed at correcting the stated evil. The provision making it unlawful to rent a room more than twice every 24 hours was challenged as violating the freedom of contract. But the Court held that it is aimed at curbing the opportunity for illegitimate use of the premises, and held that the provision was a reasonable restraint of individual liberty. The court found that the ordinance was clear enough and that it did not amount to a denial of equal protection even if hotels and motels in the suburbs would not be subject to the ordinance because, the latter were not under the legislative power of the municipal board of Manila.

In another case the Rice and Corn Board acting pursuant to the power given it by the law nationalizing the rice and corn industry,[64] promulgated a resolution providing: "No person who is not a citizen of the Philippines shall be employed in any capacity in any Filipino-owned establishment engaged in any of the lines of activities in the rice and/or corn industry except technical

[64] Rep. Act No. 3081 (196).

personnel whose employment may be authorized by the President of the Philippines upon recommendation of the Rice and Corn Board." The petitioners in *Universal Corn Products Inc. v. Rice and Corn Board*[65] sought the declaration of illegality of the construction of the resolution in connection with section 2-A of Commonwealth Act No. 108.[66] They contended that to apply the resolution to the co-petitioners, all of whom were aliens, with the result that their dismissal would be called for, would deprive them of their means of livelihood without due process of law and deny them of equal protection of the laws. The Supreme Court held that the doubts and misgivings of the petitioner are unfounded, citing *Hernaez v. King*[67] where the Supreme Court stated:

> "It is hard to see how the nationalization of employment in the Philippines can run counter to any provision of our Constitution considering that its aim is not exactly to deprive a right that he may exercise under it but rather to promote, enhance and protect those that are expressly accorded to a citizen such as the right to life, liberty and pursuit of happiness. The nationalization of an economic measure when founded on grounds of public policy cannot be branded as unjust, arbitrary, or oppressive or contrary to the Constitution because its aim is merely to further the material progress and welfare of the citizens of the country."

The right of a person to be heard before he is deprived of a constitutional right was invoked in *Makabingkit v. Yatco* where an *ex parte* order was issued for the demolition of the petitioner's house in a case in which she was not a party. The Supreme Court held that the petitioner was being deprived of her property without due process of law and granted relief.

The equal protection clause was successfully invoked against a Caloocan City ordinance imposing fees for the transfer of cadavers to be buried in private cemeteries within Caloocan from other places. The city justified the imposition of the fees as a proper exercise of police power because funeral processions involve rerouting of traffic, the assignment of policemen to maintain order; and cause erosion on city streets. While the Court did not discount these, it pointed out that the same would obtain whether the interment is made in public or private ceme-

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[65] G.R. No. 21013, Aug. 17, 1967.
[66] Anti-Dummy Act of 1936.
[67] G.R. No. 14859, March 31, 1962.

teries and whether the corpse came from outside or within the city. But the fees were only to be collected in case the cadavers came from outside the city for burial in private cemeteries, hence the undue discrimination amounting to a denial of the process.[68]

So important is the right to be heard that the constitution adds another guarantee in the Bill of Rights that "Free access to the courts shall not be denied any person by reason of poverty." In *Acar v. Rosal*[69] the Supreme Court allowed ten persons who filed a class suit on behalf of 9,000 other laborers to sue as pauper litigants even if they had regular employment. In deciding this case the Supreme Court adverted to the purpose of constitutions, which, is, "to protect and enhance the people's interest as a nation collectively and as persons individually."

Arrest, Searches, and Seizures

Article III section 1(3) of the constitution guarantees:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

Morano v. Vivo[70] involved the constitutionality of section 37(a) of the Immigration Act of 1940 authorizing the arrest for deportation upon warrant of the Commissioner of Immigration or any other officer designated by him, of any alien who remains in the Philippines in violation of any condition under which he was admitted as non-immigrant. Invoking the above quoted provision, the petitioners argued that the constitution limits to judges the authority to issue warrants of arrest and that the delegation of this power to the Commissioner of Immigration violates the constitution. This objection had been earlier ruled upon by the Supreme Court *Ng Hua To v. Galang*[71] where the court held that a deportation proceeding is not a prosecution for or conviction of a crime nor a punishment. It is the exercise of a power inherent in sovereignty to determine the conditions under which foreigners will be allowed to enter and remain on the

[68] Viray v. City of Caloocan, G.R. No. 23118, July 26, 1967.
[69] G.R. No. 21707, March 18, 1967.
[70] G.R. No. 22196, June 30, 1967.
[71] G.R. No. 19140, Feb. 29, 1964.

territory of a state. Under our immigration law the stay of a temporary visitor is subject to certain contractual obligations as contained in the cash bond put up by the alien, among them, that in case of breach the Commissioner may order the recommitment of the person in whose favor the bond was filed. One of the stipulations in the petitioners' bond was that they would actually depart from the Philippines on or before the expiration of 59 days. That period having expired the Commissioner could properly issue a warrant of arrest and confiscate the cash bond.

A telling blow was struck for the right against unreasonable searches and seizures in the case of *Stonehill v. Diokno*[72] in which the petitioners after having shown that general warrants had been issued succeeded in getting the court to exclude the evidence secured against them in their personal capacity.

In this case upon the application of the Secretary of Justice, the Acting Director of the National Bureau of Investigation, three special prosecutors and an assistant fiscal of the City of Manila, several judges issued on different dates 42 search warrants against the petitioners and/or the corporations of which they were officers for the search of their offices, warehouses and/or residences and the seizures of the following property:

> "Books of accounts, financial records, vouchers, correspondence, receipts, ledgers, journals, portfolios, credit journals, typewriters, and other documents, and/or papers showing all business transactions including disbursements receipts, balance sheet and profit and loss statements and Bobbins (cigarette wrappers)."

as "the subject of the offense; stolen or embezzled and proceeds or fruits of the offense," or "used or intended to be used as the means of committing the offense," which is described in the application as "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and the Revised Penal Code."

The petitioners alleged that these search warrants were null and void because they contravened the Constitution and the Rules of Court because, *inter alia* (1) they did not describe with particularity the documents, books and things to be seized; (2) cash money, not mentioned in the warrants, were actually seized;

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[72] *supra*, note 7.

(3) the warrants were issued to fish evidence against the petitioners in deportation cases filed against them, and (4) documents, papers and cash money seized were not delivered to the courts that issued them. The petitioners asked the Supreme Court to issue injunction pending the final disposition of the case, restraining the respondents from using the effects seized in the deportation proceedings, and in due course, to declare the search warrants null and void and to order the return of the documents, papers and other effects seized under them.

The respondents countered by arguing that (1) the contested search warrants were valid, (2) the defects of the warrants, if any, were cured by the petitioners' consent, and (3) in any event, the effects seized were admissible in evidence against the petitioners, regardless of the alleged illegality, citing the rule laid by the Supreme Court in the case of *Moncado v. People's Court*.[73]

The Court considered the seized documents, papers, and things under two groups: (1) those found and seized in the offices of the Corporations mentioned in the petition and (2) those found and seized in the houses of the petitioners.

As regards the first group the Supreme Court with Justice Castro dissenting held that the petitioners had no cause of action to assail the legality of the warrants and of the seizures because the corporations have separate legal personalities and the legality of the seizure may only be contested by the party whose rights are impaired and not by third parties. Hence, the right to contest the validity of the warrants and the seizure pertained exclusively to the corporations and not to its corporate officers in proceedings against them in their individual capacities.

The Court then proceeded to deal with the warrants to search the residences of the petitioners and the documents, papers and other effects seized from the residences. The warrants were found to have been illegally issued because their issuance failed to conform to two constitutional requirements, namely, (1) that no warrant shall issue but upon *probable cause* to be determined by the judge in the manner set forth in said provision; and (2) that the warrant shall *particularly* describe the things to be seized.

The Court found that general warrants had been issued on applications alleging that the persons named had committed "vio-

[73] *supra*, note 6.

lation of Central Banks Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code." According to the Court no specific offense was alleged in the applications. The averment with respect to the offense committed was abstract.

The Court said:

> "As a consequence, it was *impossible* for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed particular acts, or committed specific missions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. It would be a legal heresy, of the highest order, to convict anybody of a "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code," — as alleged in the aforementioned applications — without reference to any determined provision of said laws or codes.
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> "To uphold the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers. This is precisely the evil sought to be remedied by the constitutional provision above quoted — to outlaw the so-called general warrants. It is not difficult to imagine what would happen, in times of keen political strife, when the party in power feels that the minority is likely to wrest it even though by legal means."

Because of the seriousness of the irregularities committed in connection with the disputed search warrants the Supreme Court amended the Rules of Court by explicitly requiring that search warrants shall issue only upon probable cause "in connection with one specific offense" and "no search warrant shall issue for more than *one specific offense.*"[74]

The Court also found that the description of the effects to be searched for and seized was so general that the warrants authorized the search and seizure of all records "pertaining to all business transactions, regardless of whether they are legal or illegal."

On the question of whether the evidence illegally seized would be admissible nonetheless, a unanimous Court voted to adopt

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[74] Rule 126, see sec. 3. Emphasis supplied.

the exclusionary rule and thus abandoned the position taken in the Moncado case.

By this switch in position the Supreme Court made more effective the constitutional guarantee to privacy. The old rule recognized the admissibility in evidence of illegally seized documents, but gave the injured citizen the right to proceed against the erring police officer who violated the constitution by making the illegal seizure. This, the Court said, could be no more than an empty remedy for usually the violation would be made by the party in power, and "the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning power of the party for whose benefit the illegality had been committed." But even more serious than the possibility of not making the erring officer answer for his violation of the constitution were the implications of the rule which rendered admissible evidence illegally seized. For it represented law breaking by the government itself and its use of the effects of illegal acts. As the United States Supreme Court said in *Mapp v. Ohio*:[75]

> "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its existence. As Justice Brandeis, dissenting, said in Olmstead v. United States, . . . 'Our government is the potent, the omni-present teacher. For good or ill, it teaches the whole people by its example . . . If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.'"

Justice Castro agreed with the court on the abandonment of the Moncado rule but he dissented from the view that the documents and other effects seized in places other than the residence of Stonehill and his associates, in other words those seized from the corporate offices and warehouses, could not be suppressed. He believed that the petitioners had the standing to sue for the suppression of the effects found and seized in the offices of the corporation. Citing United States doctrines and pertinent cases, he said that the bases for such standing were: (a) ownership of the matters seized, (b) ownership and/or con-

[75] 367 U.S. 649, 81 S.G. 1684, 6 L. Ed. 2d 1081 (1961). In this case the United States Court held that the exclusionary rule obtaining in federal courts was applicable to the States because the right of privacy under the Fourth Amendment is enforceable against the states through the due process clause of the Fourteenth Amendment.

trol of possession of the premises searched and (c) the "aggrieved person" doctrine.

In *Central Bank of the Philippines v. Morfe*[76] the Supreme Court commended the respondent judge for his concern over the right against unreasonable searches and seizures but held that his concern was misplaced. This case involved the reasonableness of warrants obtained for the search of the offices of the First Mutual Savings and Loan Organization allegedly being used for illegal banking activities. The application for the warrant specified the illegal acts and annexed a detailed list of the papers, articles and effects being used for the commission of the felony. A municipal judge of Manila issued the warrant after he had examined under oath a detective of the Manila Police Department and an intelligence officer of the Central Bank. The Organization obtained an order from the respondent judge of the court of first instance restraining the search and seizure on the ground that the search warrant was a "roving commission" and permitted unreasonable search and seizure of documents which had no relation to the specific criminal act. The respondent judge took the view that if the deponents knew of specific banking transactions of the Organization with specific persons, they should have applied for a warrant to search and seize only the books and records covering the specific transactions. However, the Supreme Court held that the acts imputed to the Organization constituted a general pattern of its business and not isolated transactions. Hence, it was not necessary to specify or indentify the parties involved. The Supreme Court held that the municipal judge had not committed grave abuse of discretion in finding that there was probable cause that the Organization had violated the Central Bank Act.

According to the Court:

> "(I)t cannot be gainsaid that the Constitutional injunction against unreasonable searches and seizures seeks to forestall, not purely abstract or imaginary evils, but specific and concrete ones. Indeed, unreasonableness is, in the very nature of things, a condition dependent upon the circumstances surrounding each case, inasmuch as the same is one which must be decided in the light of the conditions obtaining in given situations."

[76] G.R. No. 20119, June 30, 1967.

Ex Post Facto Laws

Ex post facto means literally what is done afterwards. But used in the constitutional prohibition against the enactment of *ex post facto* laws the term is given a technical meaning. Thus, the Supreme Court refused to expand its application in the case of *Santos v. Secretary of Public Works and Communications*[77] where a fishpond owner among other things, challenged the constitutionality of Republic Act No. 2056 which authorizes the removal of dikes on navigable streams. The plaintiff averred and the trial court found that the prosecution of the plaintiff-appellees under section 3 of the Act which took effect in June 1957 for acts done half a century earlier made the Act *ex post facto*. The Supreme Court once more pointed out that the prohibition against *ex post facto* laws is applicable only in criminal cases. In this case the plaintiffs, were not being prosecuted for constructing the dikes. They were merely being ordered to demolish their illegal constructions.

Double Jeopardy

Where a plea of "guilty" is made but later withdrawn and after trial the defendant is acquitted because of reasonable doubt, the prosecution is barred by the principle of double jeopardy from appealing the judgment of acquittal.[78]

THE PARI DELICTO RULE RECONSIDERED

The Constitution provides:

> "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."[79]

In the leading case of *Krivenko v. Register of Deeds*[80] the Supreme Court held that the term agricultural land applies to all land which is neither mineral nor forest land, hence, lands suitable to residential or commercial purposes are agricultural and their transfer to aliens is covered by the above-quoted provision. As an aftermath of the Krivenko decision, Filipinos who had sold their lands to aliens brought suit to recover the land,

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[77] *supra*, note 23.
[78] People v. Padernal, G.R. No. 26734, Sept. 5, 1967.
[79] Article XIII, section 5.
[80] 79 Phil. 461 (1947).

but the Supreme Court in *Rellosa v. Gaw Chee Hun*[81] and other cases[82] held that since the Filipino vendors were equally guilty with the alien purchasers for violating the constitution, under the rule of *pari delicto*, neither was entitled to redress from the Court. Each party was left in the situation in which he was at the time of the suit. The Supreme Court, however, indicated that the lands in alien hands were subject to escheat or reversion in favor of the state. This pronouncement was made almost twenty years ago, but at this writing a single escheat or reversion proceeding has yet to be instituted. In the meantime, the land sold remained with the alien purchasers.

Philippine Banking Corporation v. Lui She[83] gave the Supreme Court occasion to re-examine the application of the *pari-delicto* rule on the transfer of land to an alien in violation of the constitutional prohibition. In this case Justina Santos executed a lease over real property for a period of 50 years in favor of Wong Heng, a Chinese national. Subsequently she gave Wong a 10 year option to buy the leased premises conditioned on his obtaining Philippine citizenship. When the application for naturalization was withdrawn Justina Santos filed a petition to adopt him and his children on the belief that adoption would confer on them Philippine citizenship. The error was discovered and the proceedings were abandoned. Instead the lease contracts were extended to 99 years and the term of the option to 50 years. In two wills executed by Justina Santos she directed her legatees to respect the contracts with Wong, but later claiming that the various contracts were made by her because of the machinations and inducements of Wong, she directed her executor to annul them. The complaint in the present action alleged among other things that the contracts were obtained by Wong "through fraud, misrepresentation, inequitable conduct, undue influence, and abuse of confidence and trust of and (by) taking advantage of the helplessness of the plaintiff and were made *to circumvent the constitutional provision prohibiting aliens from acquiring*

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[81] 93 Phil. 827 (1953).

[82] Caoile v. Yu Chiao Peng, 93 Phil. 861 (1953). Arambulo v. Cue So 95 Phil. 749 (1954) particularly the dissenting of Justice Pablo; Dingalasan v. Lee Bun Ting, 99 Phil. 427 (1956). The pari delicto rule was also referred to although the sale to aliens made during the Japanese military occupation was upheld, in the cases of Bautista v. Uy Isabelo, 93 Phil. 843 (1953) and Talento v. Makiki, 93 Phil. 855 (1953).

[83] G.R. No. 17587, Sept. 12, 1967. A second motion for reconsideration was denied on Dec. 18, 1967.

lands in the Philippines and also the Philippine Naturalization Laws."

The lower court rendered judgment annulling all except the lease contract for 50 years executed on November 15, 1957. While the case was on appeal both parties died.

The Supreme Court found that Justina Santos gave her consent freely and voluntarily in all contracts, but that the agreements amounted to a scheme to circumvent the constitutional prohibition against the transfer of lands to aliens. "The illicit purpose then becomes the 'illegal *causa*' rendering the contracts void."

The Supreme Court through Mr. Justice Castro pointed out in this case that taken singly the contracts showed nothing necessarily illegal, but considered collectively, they revealed an insiduous pattern to subvert by indirection what the constitution prohibits. In *Smith, Bell & Co., Ltd. v. Register of Deeds*,[84] the Supreme Court upheld the validity of a lease of land to an alien business entity for a period of 25 years renewable for another 25 years. The Supreme Court in passing said in the case that the lease could validly be made even for a period of 99 years. In the *Krivenko* case the Court intimated that an alien may be given an option to buy real estate on the condition that he becomes a Filipino citizen.[85]

However, in this case the alien had been given, not only a 99 year lease but a 50 year option to buy the land. During this period the Filipino owner could not sell or otherwise dispose of his property. This was considered a virtual transfer of ownership contrary to the constitution.[86]

Having declared the contracts void the Court then reconsidered the *pari delicto* rule it had originally applied in the *Rellosa* case for the following reasons: *First* because the original parties who were guilty of the violation of the constitution were both

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[84] 96 Phil. 52 (1954).

[85] An observation made in the majority opinion was to this effect: "...We are satisfied, however, that aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire." 79 Phil. 461, 481 (1947) cited in the China Banking Corporation v. Lui She case.

[86] See, Abad Santos, *Civil Law-Part One*, 43 PHIL. L.J. 1, 9 (1968).

dead and they were substituted by their administrators to whom the guilt could not be imputed. *Second,* under article 1416 of the Civil Code there is an exception to the rule on *pari delicto* which runs: "When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by law is designed for the protection of the plaintiff, he may if public policy is thereby enhanced, recover what he has paid or delivered." According to the court the ban against alien acquisition of land in the Philippines is an expression of a public policy to conserve lands for the Filipinos. In abandoning the *pari delicto* rule the Court finally held:

> "That policy would be defeated and its continued violation sanctioned if instead of setting the contracts aside and ordering the restoration of the land to the estate of the deceased Justina Santos, this Court should apply the general rule of paridelicto. To the extent that our ruling in this case conflicts with that laid down in *Rellosa v. Gaw Chee Hun* and subsequent similar cases, the latter must be considered as *pro tanto* qualified."

In his concurring opinion Justice Fernando expressed what he considered the unfortunate and deplorable consequences of applying the *pari delicto* concept indiscriminately to alien landholding declared illegal under the Krivenko doctrine. Mr. Justice Fernando took issue with the opinion in the Rellosa case that sales entered into before the *Krivenko* decision were at the time already vitiated because the parties were presumed to know the constitutional prohibition and therefore knowingly violated it. According to him this presumption "appears to ignore a postulate of a constitutional system, wherein the words of the Constitution acquire meaning through Supreme Court adjudication." In the absence of a definite decision by the Supreme Court, he believed that it would not be doing violence to the constitution to free them from the imputation of evading the constitution. But after the *Krivenko* decision aliens could not continue in possession of lands, even if acquired prior to the decision. The question as he put it was how to divest the alien of such property rights on terms equitable to both parties. The *Rellosa* decision assumed both parties in *pari delicto* and left them in the position they were. He took the view that a Filipino vendor who in good faith entered into a contract transferring land to an alien should be restored to the possession of the land when he

has filed the appropriate case. In consonance with the dictates of equity and justice the restoration of the property should be made upon payment of a price fixed by the court.

Concluding this opinion, Justice Fernando, however, stated:

> "It may be said that it is too late at this stage to hope for such a solution, the Rellosa opinion, although originally concurred in by only one justice, being too firmly embedded. The writer, however, sees a welcome sign in the adoption by the Court in this case of the concurring opinion of the then Justice later Chief Justice Bengzon. Had it been followed then, the problem would not be still with us now. Fortunately, it is never too late not even in constitutional adjudication."

Observations on the Philippine Banking Corporation Case.

What are the implications of this decision? It is submitted:

1. The decision can not operate retroactively so as to benefit Rellosa and the other parties who sued and were denied relief by final decision of the Supreme Court. As to them the doctrine of *res judicata* applies.

2. But not all Filipino vendors brought action to recover the land they had sold to aliens. Can they obtain relief now? The Supreme Court held in *Dinglasan v. Lee Bun Ting* that another reason besides the *pari delicto* rule, why the remedy sought by the petitioners could not be granted was that the action had prescribed.[87] This case was decided under the old Civil Code. The new Civil Code has changed the prescriptive period for actions over immovable property to 30 years[88]; provides a ten year period for actions upon (1) a written contract (2) an obligation created by law, (3) a judgment[89]; and in article 1410 provides that "The action or defense for the declaration of the inexistence of a contract does not prescribe." How should an action for recovery of land sold in violation of the constitution be regarded? Is it one over an immovable property which prescribes in 30 years or one of those for which a 10 years period is fixed? Or does it prescribe at all? It would seem that as an inexistent contract it is covered by article 1410 for which there is no pre-

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[87] "There is another cause why petitioners' remedy can not be entertained, that is the prescription of the action. As the sale occurred in March, 1936, more than ten years have already elapsed from the time the cause of action accrued when the action was filed (1948)." 99 Phil. 427, 432 (1956).

[88] Art. 1141.

[89] Art. 1144.

scriptive period. And that under it the parties are bound to make mutual restitution. Until that is done, the vendee is to be considered as holding the land in trust for the vendor and the latter as holding the purchase money in trust for the vendee. Under this theory of constructive trust and applying article 1410, an action to recover property sold to aliens in violation of the constitution would still be available to those Filipinos who, not having previously sued and been denied relief, are not barred by *res judicata* from recovering the land.

3. In the Rellosa and other cases the Supreme Court held that although the vendors and the vendees were barred from recovery, the state could through escheat or reversion proceedings get back the land from alien hands. The *Philippine Banking* case lifted the application of the *pari delicto* rule, but one of the justifications given for allowing recovery was that "the original parties who were guilty of a violation of the fundamental charter have died and have since, been substituted by their administrators to whom it would be unjust to impute their guilt." This adopts the view of then Justice Cesar Bengzon who in a two-paragraph concurring opinion in the Rellosa case suggested in passing that "Perhaps the innocent spouse of the seller and his creditors are not barred from raising the issue of invalidity."[90]

It is submitted, however, that in the *Philippine Banking* case, neither the appellant nor the appellee was an innocent third party to the transactions. Each represented the estate of the vendor and the vendee, respectively, hence had rights no better than those of the original parties to the transaction. The controlling reason for allowing recovery is the exception in article 1416 of the Civil Code and it would seem that the good faith or bad faith of the parties is immaterial. If this view is correct, it would facilitate recovery of land in alien hands. The vendors can sue. There would be no need to wait for escheat or reversion proceedings.

If vendors, regardless of their good faith or bad faith may recover the land, would escheat or reversion proceeding still lie? The answer would be in the negative, because the right of the vendor to recover the land necessarily excludes reversion or escheat in favor of the state. If, however, good faith on the part of the vendor be required as a condition *sine qua non* for

[90] 93 Phil. 827, 836 (1953).

recovery, then escheat or reversion proceedings would be the only way to recover the land in alien hands where because of bad faith, vendors are barred from bringing action. There is no available data on whether after the Krivenko decision transfers of land to aliens in violation of the constitution were still made. The Philippine Banking case may well be *sui generis* on this subject.

PARITY RIGHTS

The rights extended to American nationals under the parity amendment, does not include tax exemptions according to the Supreme Court in *Guerrero v. Commissioner of Internal Revenue*.[91] In this case the ordinance appended to the constitution generally referred to as the parity amendment was invoked to justify the claim for a refund of taxes paid by the estate of an American national who in his lifetime was engaged in the air transportation business. The issue was whether section 142 of the Tax Code allowing Filipinos a refund of 50% of the specific taxes paid on aviation oil could be availed of by a citizen of the United States in view of the privilege under the parity amendment to operate public utilities "in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or association owned or controlled by citizens of the Philippines." The Supreme Court applying the rule of strict construction said, that "a party claiming a tax exemption must be able to point at some positive provision of law creating the right." This was the rule prevailing at the time the parity amendment was adopted and the framers must be presumed to be familiar with the rule. The Court then stated that the parity amendment standing alone does not grant the tax exemption and nothing in its historical background can be taken as basis for the exemption. If tax exemptions had been intended they could have been so provided.

Section 142 of the Tax Code granted a partial refund of taxes during a five year period from June 18, 1952 on oils used in aviation. But the refunds in favor of citizens and corporations of foreign countries was to be granted only on a reciprocal basis, that is, if an equivalent refund or exemption was granted in respect to similar oils used in aviation by citizens and cor-

[91] G.R. No. 20942, Sept. 22, 1967.

porations of the Philippines. Apparently, the petitioner was not able to show that this reciprocity existed between the United States (specifically the home state of the decedent) and the Philippines, hence, the reliance placed on parity rights. But the Supreme Court has continued to employ the rule of strict construction in the application of the parity amendment, taking its temporary character as another basis for strict construction.

The Supreme Court speaking through Mr. Justice Fernando, said:

> "During its effectivity there should be no thought of whittling down the grant thus freely made. Nonetheless, being of limited duration, it should not be given an interpretation that would trench further on the constitutional mandate to limit the operation of public utilities to Filipino hands . . . What is transitory in character should not be given an interpretation at war with the plain and explicit command of what is to continue far into the future, unless there be some other principle of acknowledged primacy that compels the contrary."

This is the second decision of the Supreme Court on rights claimed by an American citizen or corporations under the parity amendment. The first was the case of *Palting v. San Jose Petroleum Co., Inc.*[92] In both cases the Supreme Court held against the existence of the right claimed. The nagging question the Guerrero case leaves is: Can it be said that an American citizen operating a public utility in the Philippines is operating it "in the same manner as to, and under the same conditions imposed upon" citizens if the latter have the right to a tax refund and the former has none? The tax refund provided in the law was not even intended for Philippine citizens and corporations alone. It was available even to foreign corporations on a reciprocal basis. So it was not as if the grant of the refund to the American national would be extending a right reserved to citizens only.

As to the parity amendment, the plain intention would seem to be that during the period of its effectivity it will prevail over other provisions of the constitution, lifting prohibitions imposed on aliens insofar as Americans are concerned. But it has not worked that way, so far.

While two cases may not be sufficient to establish a definite trend in the application of the parity amendment, they sug-

[92] G.R. No. 14441, Dec. 17, 1966.

gest what may be expected in the future in other cases arising under the amendment.

LOCAL GOVERNMENTS

Creation of Municipal Corporations

In this jurisdiction it is the accepted view that Congress has control over all forms of local government and may create, modify or abolish them.[93] But in the enactment of statutes establishing a new municipal corporation, Congress is bound to observe constitutional restrictions, otherwise, the law may be invalidated. Thus, in the *Lidasan* case[94] an act of Congress creating a new municipality was declared unconstitutional for including a subject not expressed in the title. One of the arguments of the respondent which was espoused by Mr. Justice Fernando in his dissent was that the statute should not be completely nullified because it was possible to expunge the offending provisions and still leave a complete statute. To resolve this issue the Supreme Court asked whether it could be assumed that Congress would have enacted the law to create the municipality of Dianaton out of nine barrios in two municipalities of Lanao del Sur if the twelve barrios in Cotabato were not included. To answer this question the court took into account the dual function of a municipal corporation. Besides being an instrumentality of the state, it also acts as an agency of the community in the administration of local affairs. Because of the latter character, such factors as population, territory, and income have to be taken considered in order to determine if a group of barrios can maintain itself as an independent municipality. Thus, the explanatory note of the bill proposing the creation of the municipality of Dianaton stated:

> "This territory is now a progressive community; the aggregate population is large; and the collective income is sufficient to maintain an independent municipality."

When the bill was presented, 21 barrios, not nine, were in the mind of the prononent and this was made evident by the location of the proposed seat of the government in one of the barrios in Cotabato. The reduced area raised problems which the court could not ignore. Thus:

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[93] Hebron v. Reyes, G.R. No. 9124, July 28, 1958.
[94] Discussed under "Subject and Title of Bills" *supra*.

> "Could the observations as to progressive community, large aggregate population, collective income sufficient to maintain an independent municipality, still apply to the motely group of only nine barrios out of the twenty-one? Is it fair to assume that the inhabitants of the said remaining barrios would have agreed that they be formed into a municipality, what with the consequent duties and liabilities of an independent municipal corporation? Could they stand on their own feet with the income to be derived in their community? How about the peace and order, sanitation and other corporate obligations?"

The Court concluded at this point that it would be unduly stretching the judicial interpretation of congressional intent to hold that Congress in this statute intended to create a new municipality out of 9 of the original 21 barrios with the seat of government left to conjecture.

In another case, relying on *Pelaez v. Auditor General*[95] the Supreme Court held the creation of a municipality in 1961 by Executive Order void *ab initio*.[96]

RELATION TO THE NATIONAL GOVERNMENT

On National Policies

It goes without saying that the opinions and views of the President over national policies prevail over those of a local executive official and are binding upon the latter. Thus, a unanimous court dismissed a petition instituted in the Supreme Court by the mayor of the City of Manila assailing the validity of a directive issued by an Assistant Executive Secretary by authority of the President to the effect that until the Supreme Court had decided the issues raised in the *Jarencio* decision[97] "all departments, offices, and instrumentalities under the Executive Department, both national and local," shall act in conformity with the opinion of the Secretary of Justice.[98]

Police Supervision

In *City Mayor v. The Chief Philippine Constabulary*[99] a conflict arose as to the power to exercise police jurisdiction within

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[95] G.R. No. 23825, Dec. 24, 1965.

[96] Municipality of San Joaquin v. Siva, G.R. No. 19870, Mar. 18, 1967.

[97] Philippine Packing Corp. v. Reyes CFI (Manila) Civil Case No. 57417, Dec. 16, 1966.

[98] Villegas v. Teehankee, G.R. No. 27028, Jan. 18, 1967. This rebuff did not prevent the same local official from tilting with the President on the issue of Japanese firms doing business in Manila.

[99] *supra*, note 62.

a chartered city. The Supreme Court found for the local government because under the charter the Chief of Police is given power "to exercise exclusive police supervision over all land and water within the police jurisdiction of the city" and under certain conditions the mayor is authorized to call upon the provincial commander, or other members of the armed forces for assistance. The court pointed out, however, that this did not amount to an encroachment on the constitutional powers of the President to call out the armed forces "to prevent or suppress lawless violence, invasion, insurrection, or rebellion."[100]

Powers of Local Government and Their Exercise

Under the Local Autonomy Act

Local governments are creations of the state and they exercise only such powers as are conferred upon them. This character of municipal corporations as governments of enumerated powers has not been changed even with the enactment of the Local Autonomy Act and the rule of liberal construction that it prescribes. This was made evident in cases decided by the Supreme Court in 1967.

In *Republic v. Montano*[101] the Solicitor General filed a petition for *quo warranto* assailing the legality of a Department of Public Safety created by the provincial board of Cavite. The Department had the nature, attributes, powers, and functions of a police force. The province justified its creation on a power it claimed was necessarily implied under the Local Autonomy Act of 1959[102] which gives it authority "To appropriate money for purposes not specified by law, having in view the general welfare of the province and its inhabitants." It was urged that in accordance with the rule of liberal interpretation prescribed in the Act any reasonable doubt as to the existence of the power should be interpreted in its favor. The Police Act of 1966 which enumerates the qualifications for appointment in a provincial police agency was also invoked.[103] In deciding that the province had acted *ultra vires* the Supreme Court held that the Local Autonomy Act of 1959 does not alter the basic nature of local governments. What it changed was the prevailing rule at the

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[100] Const., Art. VII, sec. 10(2).
[101] G.R. No. 28055, Oct. 30, 1967.
[102] Rep. Act No. 2264 (1969).
[103] Rep. Act No. 4864 (1966).

time of its enactment that the grant of powers to municipal corporations must be strictly construed against them. The Court pointed out that as a rule of interpretation it does not purport to supply power where none exists. Examining the various provisions of statutes bearing on the power of a province to create a provincial police force, the court concluded that the existing laws deny such power to provinces while conferring them on municipalities and chartered cities.

In this case the Court referred to the intention of the legislature to reserve to itself the power to create local police bodies. As the court pointed out all national and local police forces including the *posse comitatus* are created by statute. Reference in the Police Act of 1966 to "provincial police agencies," the court said, was a misnomer because this was intended to refer to provincial guards.

In *Hodges v. City of Iloilo*[104] the Supreme Court found no difficulty in upholding under the Local Autonomy Act a tax imposed by the city on the contract price for the sale of real estate, but declared that the provision of the ordinance making the payment of the tax a "requirement for registration," of the sale in the Register of Deeds or the Office of the City Treasurer was beyond the power of the City to impose. It had the effect of adding a condition to the registration of deeds of conveyance not required in the Land Registration Act which is the law governing registration of voluntary conveyances of real property registered under the Torrens system.

In these two cases the local governments relied on the liberal interpretation prescribed in the Local Autonomy Act. In both cases the Supreme Court found that the acts complained of were *ultra vires*. In both cases the Court found that certain areas had been preempted by the legislature and the local governments could not legislate in the fields thus reserved.

In another case[105] the defendants involved a municipal ordinance in their defense in a criminal case for illegal cockfighting. The court held the ordinance *ultra vires*.

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[104] G.R. No. 18276, Jan. 12, 1967.

[105] People v. Ayoso, G.R. No. 18762, April 27, 1967. Also in Viray v. City of Caloocan, G.R. No. 23118, July 26, 1967 the Supreme Court held that the collection of fees for each cadaver coming from outside to be buried in private cemeteries in Caloocan City was *ultra vires*.

Delegated Powers

The powers which may be delegated to municipal corporations may either be mandatory or discretionary. "The first are in the nature of a duty the second may be considered rights."[106] In *Bernad v. Catolico*,[107] the petitioners were cited for contempt by a district judge for not providing a detention cell for prisoners pending trial of their cases in a branch of the court of first instance stationed in Ozamis City. The municipal board as a gesture of cooperation offered the temporary use of a cell in the city jail until the provincial board could provide one, but made of record its belief that the duty to provide the detention cell pertained to the province and not to the city. The Supreme Court upheld the stand of the city stating that its charter did not require it to provide a detention cell for provincial prisoners, but the Revised Administrative Code makes it a mandatory duty of the provinces to maintain jails at their provincial capitals. Furthermore, the Code provides that municipal funds shall be devoted exclusively to local purposes.

Local governments exercise their delegated law-making powers through a local governing body, whose composition, functions, and operation are governed by enabling acts. Not infrequently the binding effect of the acts may depend on whether they received the vote required by law. But an act which did not receive the necessary majority at first may subsequently be ratified. Thus in *Arao v. Luspo*[108] a resolution abolishing municipal positions received the following votes: three in favor, two against, and three abstaining. However, on the same day the municipal council adopted by unanimous vote the municipal budget which abolished the positions. The Supreme Court held that the suppression of the positions in the budget resulted in their abolition.

Where a city prematurely dismisses an employee does it become liable for back salaries and damages? In *Abellera v. City of Baguio*[109] the petitioner was charged with gross negligence in the performance of his duties and after investigation was found guilty. The Commissioner of Civil Service considered him resigned, in view of which the City dismissed him and appointed

[106] SINCO AND CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS, 62 (1955).
[107] G.R. No. 25866, June 29, 1967.
[108] G.R. No. 23982, July 21, 1967.
[109] G.R. No. 23957, March 18, 1967.

another to the position. Upon appeal the Civil Service Board of Appeals reduced the penalty to suspension, but when the petitioner reported for work he was not given his former position. Hence this action. The city contended that under its charter it is exempt from liability for damages caused by the failure of its officials to enforce any provision of law or ordinance or the negligence of these officials in enforcing the same. The Supreme Court held that this was not a case of "failure or negligence of city officials to enforce the law." It was a case of haste or over zealousness. But it was not done with malice or bad faith, because by reason of the petitioner's negligence the city had lost money. The city officials could not be held liable for damages either.

LOCAL OFFICIALS

Municipal Attorney

The Local Autonomy Act of 1959 authorizes the creation of a legal division in municipalities and municipal districts. What functions may a municipal attorney perform? Does he supplant the fiscal as legal officer of the municipality? The case of *Calleja v. Court of Appeals*[110] supplies the answers to these questions. In this case a municipal attorney collaborated with the provincial fiscal as counsel for a municipality and signed a notice of appeal without the accompanying signature of the provincial fiscal. The plaintiffs questioned his authority to do so, asserting that under the Revised Administrative Code the only officer who could represent the municipality or its officers is the provincial fiscal. The Supreme Court harmonized the provisions of the Revised Administrative Code[111] with the Local Autonomy Act and concluded that the provincial fiscal and the municipal attorney may act as legal officer or counsel for the municipality. The Local Autonomy Act modifies the Revised Administrative Code in municipalities which have created the office of municipal attorney. This officer can act without the fiscal's consent, in all cases wherein the municipality or any of its officers in his official capacity is a party.

Effect of Reelection on Prior Misconduct

The effect of an election for another term on charges pending against a municipal official for acts committed during a

[110] G.R. No. 22501, July 31, 1967.

[111] Sections 1681 and 1683 with section 3 par. 3(a), Rep. Act No. 2264 (1959).

previous term was involved in two cases during the year under review. In the *Pascual* case,[112] the Supreme Court held that a subsequent election condoned prior misconduct. This rule was invoked in *Provincial Board of Zamboanga del Sur v. De Guzman*[113] to enjoin the provincial board from proceeding with administrative charges of abuse of authority, oppression, and maladministration against a municipal mayor for causing injury which resulted in the death of the victim. On the basis of the same incident a criminal case was filed against the mayor. The Supreme Court held that the provincial board could not proceed as yet with the administrative investigation, but not because the mayor's reelection purged him of the administrative charges. The Supreme Court found that the alleged killing committed by the mayor was not essentially connected with the performance of his official duties. Under the Revised Administrative[114] to be a cause for proceeding administratively in a case of this nature, there must be final conviction of a crime involving moral turpitude. Hence, the administrative proceedings must be deferred.

In *Ingco v. Sanchez*[116] the petitioner went even further and asserted that because of his reelection, a criminal charge against him of estafa through falsification of public documents should be dismissed because the reelection operated to condone the alleged malfeasance committed by him during a previous term. The petitioner relied on the *Pascual* case. However, the Supreme Court pointed out that the rule invoked was not applicable because the present case is a criminal accusation against the petitioner as a private citizen, while an administrative investigation is for the suspension or removal of the official charged. The ruling in the *Pascual* case that "when the people have elected a man to office it must be assumed that they did this with knowledge of his life and character and that they disregarded or forgave his faults or misconduct if he had been guilty of any" refers to an action for removal from office, but does not apply to a criminal case, because a crime is a public wrong and is injurious to the state as a whole. Furthermore, the enumeration

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[112] Pascual v. Provincial Board of Nueva Ecija, G.R. No. 11959, Oct. 21, 1959.
[113] G.R. No. 23523, Nov. 18, 1967.
[114] Section 2188. But see Decentralization Act of 1967, sec. 5.
[115] G.R. No. 23220, Dec. 18, 1967.
[116] Art. 89.

of the grounds for extinction of criminal liability, in the Revised Penal Code does not include reelection to office.[116]

MUNICIPAL PROPERTY

Municipal Waterworks

The travails of the National Waterworks and Sewerage Authority (NAWASA are not limited to the lack of water during the dry months and floods during the rainy season. The NAWASA continues to be on the losing side of litigations instituted by local governments contesting its taking over of municipal waterworks systems. Thus in a number of cases, starting with *City of Baguio v.* NAWASA,[117] the Supreme Court has upheld the stand of local governments that the NAWASA may not under its enabling act[118] take without the payment of just compensation the waterworks systems established and operated by local governments. In *Municipality of San Juan v. National Waterworks and Sewerage Authority*[119] the court rejected the "pretense" of the NAWASA that its possession, administration and control of the local waterworks was not a transfer of ownership or title but a valid exercise of police power. Besides referring to past cases in which the same point was belabored, the Supreme Court here said that the option given to NAWASA to retain the waterworks by paying for it, should have a time limit. This was fixed at six months from entry of the judgment.

In another case[120] the NAWASA claimed that a municipal mayor's order to collect the water bills in the name of the municipality encroached on its supervisory power over the municipal waterworks. In rejecting this contention the Supreme Court pointed out that not only do municipalities have express statutory authority on the matter[121] but even without these pro-

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[117] G.R. No. 12032, Aug. 31, 1959; 57 O.G. 1579 (Feb. 1961); City of Cebu v. NAWASA, G.R. No. 12892, April 20, 1960; Municipality of Naguilian v. NAWASA, G.R. No. 18540, Nov. 14, 1963; Municipality of Campostela v. NAWASA, G.R. No. 21763, Dec. 17, 1966; Municipality of Lucban v. NAWASA, G.R. No. 15525, Oct. 11, 1961. In NAWASA v. Catolico, G.R. No. 21705 and Province of Misamis Occidental v. NAWASA, G.R. No. 24327, decided April 27, 1967 the immediate execution of judgment against the NAWASA was upheld but exemplary and temperate damages were denied.

[118] Rep. Act No. 1383 (1955).

[119] G.R. No. 22047, Aug. 31, 1967.

[120] NAWASA v. Dator, G.R. No. 21911, Sept. 29, 1967.

[121] Rev. Adm. Code, sec. 2317 and Rep. Act No. 2264, sec. 2 (1959).

visions, its authority to fix and collect the fees from its waterworks is justified in its inherent power to administer its patrimonial property.

The Squatter Problem

The Supreme Court dealt with the problem of squatters over city property in *City of Manila v. Garcia*.[122] In this case suit was brought by the city to recover land occupied by the defendants who had entered the premises without the plaintiff's knowledge or consent, although later some of them obtained a permit from the city mayor and rentals on the land they occupied. Because the city wanted to build a schoolhouse on the premises the defendants were given 30 day's notice to leave and when they refused, this action was filed. The trial judge inquired into the question of whether the city really needed the premises. On this point the Supreme Court held that not only was the judge bound to take judicial notice of the ordinance of the city of Manila appropriating funds for the construction of an additional schoolbuilding, but that the city's right of ownership being paramount, its need for the premises was unimportant. The defendants had no right to remain in the premises. They had entered the land illegally and constructed their houses illegally. The mayor's permit could not legalize their presence on the land.

After tracing the developments of the squatter problem the Court declared the mayor's permits null and void, thus:

> "Squatting is unlawful and no amount of acquiescence on the part of the city officials will elevate it into a lawful act. In principle, a compound of illegal entry and official permit to stay is obnoxious to our concept of proper official norm of conduct. Because, such permit does not serve social justice; it fosters moral decadence. It has it roots in vice; so it is an infected bargain. Official approval of squatting should not, therefor, be permitted to obtain in this country where there is an orderly form of government."

The court also declared that the illegally constructed houses impaired the use of the land for school purposes, should be considered as nuisances *per se* and subject to summary abatement.

It would be naive to consider the problem of squatters solved with their eviction. A dispute involving the recovery of land occupied by squatters would, of course, inevitably result in a

[122] G.R. No. 26053, Feb. 21, 1967.

decision in favor of the owners of the property. But the problem of squatters has social, economic, and political implications. It demonstrates the acute need for housing in urban areas which neither the national nor local governments can ignore. While housing projects are being undertaken, they are as yet grossly inadequate especially for the low income groups. Eviction of a sizeable number of squatters from one area would mean their resettlement in another, and this involves not merely the pulling out of houses or shacks from one place in order to construct them in another. At the relocation site adequate water, light, transportation, schools, health services and other facilities have to be provided. Employment opportunities have to be taken into account. All these require planning and the expenditure of public funds. Since it is now no longer possible for a sector of the population to provide their own housing needs the government has to step in. But the government cannot hope to solve the squatter problem without attending to other needs, just as basic, of the squatter population.

A SENATE ELECTORAL TRIBUNAL DECISION: HIDALGO V. MANGLAPUS[123]

The Constitution provides:

> "The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualification of their respective members . . . [124]

Under this provision not only is the jurisdiction of each Electoral Tribunal over the election, returns and qualification of the members exclusive but the decision of each Tribunal is also final.[125] Whether finality can be equated with effectiveness, is another question.

In 1967 the Senate Electoral Tribunal decided a case of first impression, disqualifying Senators Raul Manglapus, Maria Kalaw Katigbak, and Gaudencio E. Antonino from continuing to hold the office of Senator of the Philippines because each had spent in the election campaign an amount in excess of the total annual emolument attached to the office.

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[123] Senate Electoral Tribunal, Electoral Case No. 5 (May, 1967) motion for reconsideration decided, Sept. 22, 1967.

[124] Const., Art. VI, sec. 14.

[125] The Supreme Court dismissed the respondent's appeal. Manila Times, Sept. 26, 1967.

Raul Manglapus topped the senatorial list in the 1961 election by obtaining 3,489,658 votes. Gaudencio E. Antonino was number 5 and Maria Kalaw Katigbak placed 6th among the eight senators proclaimed elected. Ernesto Hidalgo a candidate for senator who placed number 20 with 1,878 votes filed a protest with the Senate Electoral Tribunal against all the eight who had been proclaimed, invoking sections 29 and 48 of the Revised Election Code which provide:

> "Section 29. *Disqualification on account of violation of certain provisions of this Code.* — Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court or tribunal guilty of (a) having spent in his election campaign more than the total emoluments attached to the office for one year; . . . shall be disqualified from continuing as a candidate, or, if he has been elected, from holding the office."
>
> "Section 48. *Limitation upon expenses of candidates.* — No candidate shall spend for his election campaign more than the total amount of the emoluments for one year attached to the office for which he is a candidate."

The respondents contended that to declare them disqualified to continue holding their offices as senators for violation of these provisions, is to require another qualification other than and in addition to those specified in the Constitution for election to the office. The Senate Electoral Tribunal however, ruled that the Constitution prescribes the minimum qualifications that a Senator-elect must possess but does not "divest the legislature of the power to impose by statute certain conditions, in the form of disqualifications or otherwise, in the process of selecting a Senator for the purpose of ensuring an orderly, honest and free election... The prohibition on excessive campaign expenditures lies within the police power of the State..." The Tribunal pointed out that the disqualification under section 29 attaches not for what the candidate is but for what he has done; it is not the candidate's eligibility that is affected, but his election or right to occupy the seat that is nullified. The Tribunal also pointed out that the disqualification under section 29 is distinct from the criminal liability under sections 185 and 187 of the Election Code.

Another point which the Tribunal discussed was the meaning of the phrase "total amount of emoluments for one year." The Constitution fixes the compensation of Senators and Members of the House of Representatives at "an annual compensa-

tion of seven thousand two hundred pesos each, including per diems and other emoluments and allowances, and exclusive only of traveling expenses to and from their respective districts in the case of Members of the House of Representatives and to and from their places of residence in the case of Senators, when attending sessions of Congress."[126] One of the protestees advanced the theory that the "Total amount of emoluments for one year" appearing in section 48 of the Election Code does not refer exclusively to the annual salary of a senator but includes "per diems and other emoluments and allowances." The Electoral Tribunal rejected this contention by stating that under the constitution the annual compensation of seven thousand two hundred pesos includes per diems and other emoluments or allowances and excludes only traveling expenses and that what section 48 refers to is the total compensation attached to the office and not the total amount that an elected official may receive in one year, even if in actual practice he may receive a bigger amount. The limitation was applied not only to the total disbursement of the candidate himself but also to amounts disbursed by other persons in aid or support of his candidacy, if made with the candidate's knowledge and consent. The Senate Electoral Tribunal found convincing proof that Senators Manglapus, Katigbak, and Antonino spent more than the law allowed and in disqualifying them from continuing to hold the position of Senator, the Tribunal declared that it took "cognizance of the general feeling that the legal restrictions upon allowable election campaign expenditure by candidates are unrealistic, especially in the case of candidates for Senator who are elected at large throughout the Philippines. But, as long as the present statutory limitation is not repealed, the Tribunal, like ordinary Courts, is inescapably duty bound to apply it and uphold the rule of law. The remedy, if any, must be sought from the legislature."

This decision was received with mixed reactions. The press was critical of the "legalistic" view taken on the issue of over spending.[127] Equally strong views in support of the decision were

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[126] Const., Art VI, sec. 14.

[127] Artemio Panganiban, Jr. 3 *Senators Cases* Manila Times, May 29, 1967, p. 22-A; Fr. Francisco Araneta. *The Reason Why,* Manila Chronicle, May 24, 1967, p. 4; M.N. Querol, *The Other Side,* May 21, 1967, p. 5-A and other critics are cited in Laureta, *The Manglapus Antonino-Katigbak Case: A Dissent Against the Critics of the Tribunal.* 13 LAW REGISTER, 4 (Aug., 1967).

expressed.[128] The three senators served for practically the full six year term; at the close of the last regular session in 1967 motions for reconsideration were still pending.[129]

LEGISLATION

Among the more significant measures approved during the 1967 regular and special sessions of Congress were the statute providing for the submission of the two resolutions proposing amendments to the constitution for ratification,[130] the act providing for the election of delegates to and the holding of a constitutional convention,[131] and the Decentralization Act of 1967.[132] The other statutes which have bearing on this survey were local legislation carving new provinces out of existing ones,[133] creating chartered cities,[134] municipalities,[135] municipal districts[136] and even barrios.[137] Congress adopted Republic Act No. 5059 granting life pension and franking privilege to former Presidents of the Philippines.

Implementing Proposals for Constitutional Amendment

The constitutionality of Republic Act No. 4913 was upheld in *Gonzales v. Commission on Elections,* discussed earlier in this survey. Republic Act No. 4914 implements Joint Resolution No. 2 of both Houses of Congress adopted on March 16, 1967. It provides for the election from each representatives district of two delegates[138] to the constitutional convention on the second Tuesday of November 1970[139] and prescribes the same qualifications

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128 Laureta, *supra,* note 122 and V.G. Sinco, Letter to the Editor, 13 Law Register, 4 (Aug., 1967).

129 The Senate Electoral Tribunal affirmed its original decision on Sept. 17, 1967. An appeal to the Supreme Court was dismissed on Sept. 25, 1967.

130 Rep. Act No. 4913.

131 Rep. Act No. 4914.

132 Rep. Act No. 5185.

133 Rep. Act No. 4867 creating the provinces of Davao del Norte, Davao del Sur and Davao Oriental out of the former Davao province, Rep. Act No. 4979 creating the provinces of Agusan del Norte and Agusan del Sur.

134 Rep. Act No. 4894 (creating the City of Capiz) Rep. Act No. 5131 (creating the City of Tangub).

135 Rep. Act Nos. 4868, 4869, 4870, 4781, 4872, 4873, 4964, 4876, 5930, 4906, 5077, 5093, 4974, 4975, 4976, 4978, 4986, 5139, 5006, 5161.

136 Rep. Act No. 4973.

137 Rep. Act Nos. 4984, 4985, 4987, 4992, 4995, 49994, 5000, 5001 (creating barrio Sikip in Lipa City).

138 Section 1.

139 Section 2.

from delegates as those for members of the House of Representatives.[140] Section 4 of the act provides:

> "The office of Delegate shall be compatible with any other public office; *Provided,* That delegates who do not receive any salary from the Government shall be entitled to a *per diem* of fifty pesos for every day of attendance in the convention or any of its committees; *Provided, however,* That a delegate who is receiving salary from the Government may choose to receive his salary or the *per diem* herein provided; *Provided further,* That every delegate shall be entitled to the necessary traveling expenses to and from his place of residence when attending sessions of the convention."

It is interesting to compare the implementing statute with Resolution No. 2 on the nature and perquisites of the office of delegate. Section 3 of the Resolution provides:

> "The office of Delegate shall be honorary and shall be compatible with any other public office: *Provided,* That Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the Convention or in any of its committees; *Provided, however,* That every delegate shall be entitled to necessary traveling expenses to and from his place of residence when attending sessions of the Convention or of its committees."

In the debates over Resolution No. 3 which proposed to allow members of Congress to become delegates of the Constitutional convention, the view was advanced that the position of delegate is not a public office and therefore to enable the members of Congress to become delegates without forfeiting their seats it was not even necessary to amend the constitution. But both the resolution and the implementing statute refer to the "office of delegate," hence, this pretense that it is not an office need not be taken seriously. It will also be noted that while the resolution refers to the office as "honorary," the statute does not and while the resolution allows a per diem only to those delegates who are not in the government service, the statute gives those in the government service the option to choose between their salary or the *per diem.*

Both the resolution and the statute declare that the office of delegate shall be compatible with any other public office. This is intended to permit any person in the government service to become a delegate without running afoul any existing law. As to members of Congress the need to amend the constitution was

[140] Section 1.

recognized, its rejection indicating that the people do not want them to become delegates unless they give up their seats.

On the other hand the resolution and the statute would enable any other officer in the government to hold the position of delegate. However, Article XII section 2 of the Constitution provides:

> "Officers and employees in the Civil Service including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote."

The office of delegate is elective and the provisions of the Election Code insofar as they are not inconsistent with the provisions of the act are made applicable.

When an officer in the civil service or a member of the armed forces runs for election as delegate to the convention, he is engaging directly or indirectly in partisan political activity and taking part in an election and not merely to vote. The constitutional prohibition cannot be lifted by an ordinary statute. When in 1934 the Philippines Legislature adopted Act No. 4125 implementing the Tydings-McDuffie law, it provided:

> "The office of delegate shall be honorary and shall be compatible with any other public office not subject to the civil service rules."

Then there was no constitutional prohibition similar to Article XII section 2 and there was no absolute prohibition directed against members of the legislature from holding any other office or employment without forfeiting their seats. And Act No. 4125 did not have a compatibility provision as to public officers subject to civil service rules. In view of the constitutional inhibitions imposed on those in the civil service and members of the armed forces, it is doubtful if the provisions of the resolution and Republic Act No. 4914 will have the effect of excusing them from the constitutional prohibition regarding partisan political activity or participating in any election except to vote.

Another provision of the law is that which fixes the number of delegates from the existing representative districts. These districts in the main are those which existed in 1935.[141] In the meantime the population has more than doubled,[142] but the constitutional maximum of 120 seats has never been achieved because of the failure of Congress to reapportion the seats in the

[141] Const., Article VI, sec. 6.

[142] In 1935 the population was about 15 million. Today it is more than 33 million.

lower House after each enumeration. Resolution No. 1 proposing to increase and reapportion the seats in the lower house having been rejected, the election of delegates to the constitutional convention is to be made on the basis of the existing representative districts. This would mean that the representation would be as disproportionate to the population as it is in the present House of Representatives.[143] Congress could easily have provided for election of the delegates on a different basis. This it can still do by enacting a statute apportioning the number of delegates among the different provinces and cities on the basis of their population because the delegates need not under the constitution be chosen from the existing districts. If such a statute were adopted the convention could be more truly representative.

THE DECENTRALIZATION ACT OF 1967

The declaration of policy of Republic Act No. 5185 expresses in a nutshell the problem which attends the transformation of local governments into more autonomous units. It provides:

> "Sec. 2. Declaration of Policy. — It is declared to be the policy of the State to *transform local governments gradually* into effective instruments through which the people can, in a most genuine fashion, govern themselves and work out their own destinies.
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> "It is therefore, the purpose of this Act to grant to local governments greater freedom and ampler means to respond to the needs of their people and promote their prosperity and happiness and to effect a more equitable and systematic distribution of governmental powers and resources. To this end, local governments henceforth shall be entrusted with the performance of those functions that are more properly administered in the local level and shall be granted with as much autonomous powers and financial resources as are required in the more effective discharge of these responsibilities." (Italics supplied)

The provision is reproduced verbatim from the bill[144] passed by the Sixth Congress at its second session and vetoed by the President. The veto sparked a lively controversy.[145] While the

[143] A populous province like Rizal which according to the 1960 census had 1,456,362 inhabitants, has 2 representative districts as compared to Cebu with a population of 1,332,847 which has 7 representative districts and Albay which has 514,980 inhabitants and 3 districts; Camarines Sur with a population of 819,565 has the same number of representative districts as Rizal.

[144] S. No. 1 and H. No. 3100.

[145] Manila Times, March 27, 1967, and other dailies.

champions of the vetoed measure and those who opposed it were agreed on the desirability of local autonomy, there was disagreement as to the nature and extent of the powers that should be given immediately to local governments. Thus, the original measure provided for the transfer of field agricultural extension work and rural health work to provincial governments;[146] the compromise measure which later became Republic Act No. 5185 gave to provincial and city governments the power to undertake these functions to supplement existing national programs.[147] The unwillingness to transfer these functions outright to local governments can be attributed to the policy of the national government to undertake agricultural extension and rural health work on a national level in accordance with policies and programs formulated by national offices instead of surrendering them to local governments to be pursued in accordance with local policies. The Decentralization Act of 1967 removes certain strictures imposed on the exercise of local government powers, but not completely;[148] it confers additional powers on local governments,[149] but withholds some of the powers and privileges the vetoed measure would have extended.[150] It provides for uniform causes for suspension or removal of elective local officials, namely, disloyalty to the Republic of the Philippines, dishonesty, oppression and misconduct in office.[151] Under the Revised Administrative Code these are the causes for suspension or removal of elective provincial officials,[152] other causes were prescribed for municipal officials,[153] while City charters had their own provisions on the subject.[154] The new law makes the causes uniform; provides for the procedure to be followed, retaining however, the old provisions on appeal; and imposes the following limitations on admi-

146 Sec. 3.
147 Sec. 3.
148 Secs. 11 & 12 enumerates the actions of local governments which can be immediately made effective without the need of approval or direction by any official of the national government as required in specified sections of the Revised Administrative Code.
149 Secs. 4, 18 & 19.
150 Secs. 15-21 of the vetoed measure.
151 Sec. 5.
152 Sec. 2078.
153 Section 2188 specified neglect of duty, oppression, corruption or other form of maladministration of office and conviction by final judgment of any crime involving moral turpitude.
154 Thus Republic Act No. 409 (1949) provides that the mayor of the City of Manila "shall hold office for four years, *unless sooner removed*" (sec. 9) but does not specify what the causes for removal shall be. The charter of the City of Baguio originally provided for appointive officials whom the President could "remove at pleasure" (sec. 2545). The Supreme Court declared this provision repealed by the Constitution.

nistrative investigations:[155] *First* they may not be commenced or continued within ninety days prior to an election. *Second,* the preventive suspension shall not extend beyond sixty days. *Third,* the penalty of suspension shall not exceed the unexpired term of the respondent. *Fourth,* the penalty of suspension or removal shall not be a bar to the candidacy of the respondent so suspended or removed for any elective public office as long as he meets the qualifications required for the office.

The Decentralization Act of 1967 also corrects defects and fills certain gaps discovered in existing laws. Thus, it provides that municipalities and municipal districts shall be created and their boundaries modified only by Act of Congress, expressly repealing section 68 of the Revised Election Code.[156] It prohibits provincial governors, city and municipal mayors and members of the provincial board, of city or municipal councils from appearing as counsel before any court in a civil case where the province, city or municipality as the case may be, is the adverse party; or as counsel in a criminal case wherein an officer or employee of the province, city or municipality is accused of an offense committed, in relation to the latter's office, or collect any fee for his appearance in any administrative proceedings before provincial, city or municipal agencies of the province, city or municipality of which he is an elected official. But a member of the provincial board may appear on behalf of the province in any civil case wherein any city in the province is the adverse party whose voters are enfranchised to vote for provincial officials.[157] These inhibitions are similar to those imposed on members of Congress.[158]

Provision is made for succession to the office of vice-governor or vice-mayor and for the filling of special vacancies in local legislative bodies.[159]

The vetoed measure provided for the outright transfer to provincial governments of the entire collection from the internal revenue tax on banks, documentary stamp tax and amusement

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155 Sec. 5.

156 Sec. 20. This removes whatever doubts may have remained regarding the effect of the Pelaez case on the provisions of section 68.

157 Sec. 6.

158 Constitution, Art. VI, sec. 17. The Revised Administrative Code inhibits local officials from having pecuniary interest direct or indirect in any contract, contract work, or other municipal business, etc. (secs. 2176, 2761) City charters have similar provisions.

159 Secs. 6-10.

taxes to accrue to the Decentralization Special Fund to enable the provincial governments to finance the field agricultural extension work and the rural health work transferred from the national government.[160] Under this arrangement local government functions were to be financed from taxes imposed by the national government. It would seem that the transfer to local governments of functions not essentially pertaining to the national government would meet with less resistance if local governments were prepared to undertake them on their own. This would mean having the funds necessary for the undertaking. But where funds are to come from taxes imposed by the national government, the demand of local governments for the transfer of functions would be less effective. The assertion of autonomy by local governments dependent on financial support from the national government can be likened to a child who asserts his independence while still relying on the allowance his parents give him.

The Local Autonomy Act of 1959 gives local governments broad taxing powers.[161] If with the exercise of these powers local governments cease to be dependent on national allotments, there would be less reluctance to more decentralization. As it is, sections 13 to 17 of the Decentralization Act of 1967 are devoted to allotments, from national revenue, their increase, retention, release, adjustment, apportionment, etc.

Other provisions of the Decentralization Act of 1967 provide for the appointment of local officials[162] the creation of certain positions,[163] and to insure the conduct of continuing studies on local governments and the codification of laws governing them a joint executive-legislative commission is created.[164] This continuing interest of the national government for more autonomy are healthy signs. But as the Congress itself has declared the transformation of local governments into effective instruments by which the people can govern themselves and work their own destinies is to be accomplished gradually.[165] It has to be accomplished within the limits of present constitutional provisions and taking into account existing conditions and developments on the national and local levels.

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[160] Sec. 15.
[161] Rep. Act 2264, sec. 2 (1959).
[162] Sec. 4.
[163] Secs. 18-20.
[164] Sec. 21.
[165] Sec. 2.