CAN THE DELEGATES TO THE CONSTITUTIONAL CONVENTION IN 1971 "REVISE" AND "REWRITE" THE PRESENT CONSTITUTION OF THE PHILIPPINES OR CAN THEY WRITE A NEW CONSTITUTION?

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Preliminary Statement

There has been expressed in several quarters the view that the Constitutional Convention called for in 1971 under Section 1 of the Resolution of both Houses of Congress No. 2, can "revise" and "rewrite" the present Constitution of the Philippines. It is even argued that the convention can make a new Constitution. Because these matters are very fundamental, they must consequently be thoroughly and fully analyzed for our people.

DISCUSSION

The Constitutional Convention in 1971 — Why it Was Called

The basic authority for the constitutional convention of 1971 is the Constitution of the Philippines, which provides that:

> "The Congress in joint session assembled, by a vote of three-fourths 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."[1]

The above provision is clear as to what the Constitutional Coventon shall only do. It states that the Congress *"may propose amendments to this Constitution or call a convention for that purpose."* Whether it is Congress or the convention, it is clear that their authority to act under this article is merely to "propose" amendments to the Constitution.

The Constitution did not say *"may revise the Constitution or call a convention for that purpose."* Consequently we cannot read the phrase *"may propose amendments to this Constitution"* as *"may revise the Constitution"* because we cannot read something into the Constitution which is not there.

The joint resolution calling for the election of delegates and holding of constitutional convention passed by both Houses of Congress, which provides that —

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[1]Const. art. XV, sec. 1, first sentence.

> "There is hereby called a convention to *propose amendments* (not to revise the Constitution) to the Constitution of the Philippines, to be composed of two elective delegates from each representative district who shall have the same qualifications as those required of the House of Representatives."[2]

springs from the same provision of the Constitution itself.

In construing the provision of the Constitution, calling for a constitutional convention in accordance with the above resolution, the rule to be observed is:

> "A constitutional provision, x x x should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation, and suppress the mischief at which it was aimed."[3]

> "It is a cardinal rule in the interpretation of Constitution that the instrument must be construed as to give effect *to the intention of the people who adopted it.*"[4]

> "The meaning of a constitutional provision being plain, *it must stand, be recognized and obeyed, as the Supreme Law of the land.*"[5] (Underlining supplied).

The "evident purpose" of the provision of the Philippine Constitution[6] on this matter is clear. It refers to propose amendments not "to revise the Constitution." This provision must be given effective operation to attain its objective — to enable the people to approve or reject *"proposed amendments"* to the Constitution.

How these amendments after having been "proposed" shall thereafter become *valid* is clearly stated in Section 1 of Article XV of the Constitution under the title of "AMENDMENTS" which provides that —

> "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."[7] (Underlining supplied)

From all the foregoing, therefore, by clear constitutional and legal mandates, the convention in 1971 has been called merely *to propose amendments*, which "amendments" do not become valid *"as part of this Constitution"* unless they are approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

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[2]sec. 1, Resolution of both Houses of Congress No. 2.
[3]6 R. C. L., p. 50.
[4]Black on Construction of Constitutions, p. 15.
[5]Black on Construction of Constitutions, p. 21.
[6]Const. art VI.
[7]*Ibid.*, second sentence.

Manner of Calling the Convention

The customary manner of calling constitutional convention in the United States is by *resolution* of the legislature followed by a submission of the question to the electorate.[8]

In the instant case before us, such procedure has been done by approving Resolution No. 2 of both Houses of Congress and submitting such resolution to the people for their approval.

Power of the Convention

After the approval of the resolution, the constitutional convention is convened by the people under the presumption that they have ratified the legislative call.

> "When the people, acting under a proper resolution of the legislature, vote in favor of calling a constitutional convention, they are *presumed* to *ratify* the *terms of the legislative call*, which thereby becomes the basis of the authority delegated to the convention."[9]

What Is The Legislative Call?

The legislative call here is to *"propose amendments"* — the constitutional convention must propose the amendments and have such amendments — propositions — submitted to the people for their ratification. Before their ratification by the people these amendments "have no governing force." Only by ratification do they become valid as part of the Constitution they seek to amend.

For —

> "A constitutional convention is not a coordinate branch of the government. *It exercises no governmental power*, but *is a body raised by law*, in aid of the popular desire to discuss and *propose amendments which have no governing force so long as they remain propositions.*"[10]

In Pursuing Legislative Call, Congress is Merely Acting Under a Limited Power

> "The power of the legislature to initiate changes in the existing organic law *is a delegated power*, and one which it has been conferred. In submitting propositions for the amendment of the Constitution, the legislature is not in the exercise of its legislative power, or of any sovereignty of the people that has been entrusted to it, but is merely acting under a *limited power*, conferred upon it by the people, and which might with equal propriety have been conferred upon either house, or upon the governor, or upon a special commission, or any other body or tribunal. *The extent of*

[8]State v. Dahl, 6 N.D. 81, cited in 6 R.C.L., p. 27.
[9]State v. Dahl, 6 N.D. 81, cited in 6 R.C.L., p. 27.
[10]Wells v. Brain, 75 Pa. St., 39, 15 Am. Rep. 563 cited in 6 R.C.L., p. 27.

this power is limited to the object for which it is given, and is measured by the terms in which it has been conferred, and it cannot be extended by the legislature to any other objects, or enlarged beyond these terms. Accordingly, it has been judicially stated that the legislature *is not authorized to assume the function of a constitutional convention and propose for adoption by the people a revision of the entire Constitution under the form of an amendment,* nor can it submit to their votes a proposition which, if adopted would, by the very terms in which it is framed, be inoperative.[11]

"Amendment" Defined

"An 'amendment' of a constitution repeals or changes some provision in, or adds something to, the instrument amended."[12]

The word "amendment" is clearly susceptible to a construction which would make it cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject, as well as of the construction that *every proposition which effects a change in the Constitution or adds to or takes from it is an amendment.*[13]

"Revision" Defined

"Revision" is the act of revising, specially critical or careful examination, a perusal with a view to correcting or improving. A product of this, a *revised version.*[14]

Revision Distinguished From Amendment

"Revision," as applied to *fundamental law,* such as *constitution* or city charter, suggests convention to examine whole subject and prepare and submit *new instrument* fundamentally changing old law, while "amendment" is correction of detail; "revision" being act of re-examination to correct, review, alter, or amend, while "amendment" implies *such addition* to or change *within lines of original instrument* as will effect improvement or better carry out purpose thereof. "Revision" of city charter implies redraft of *whole law* without obligation to maintain form, scheme, or structure of old charter, while *"amendment" implies continuance of general plan with corrections.*[15]

"Amendment" and "revision" of constitution are *separate procedures* each having a substantial field of application, not mere alternative procedures in the same field.[16]

As the Constitution is to have "as part," proposed *"amendments"* and there is no legislative call to revise the Constitution, for the purpose of producing a *revised version* and as "amendment" and "revision"

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[11]Livermore v. Waite, 102 Cal. 113, 36 Pac. 424, 25 L.R.A. 312.

[12]Wilson v. Crews, 34 So. 2d 114, 117, 160 Fla. 169.

[13]People ex rel. Elder v. Sours, 74 P 167, 178 31 Colo. 369 102 Am. St. Rep. 34 citing State ex rel Hudd v. Timme, 11 N.W. 785 54 Wis. 318.

[14]The Oxford Universal Dictionary, Vol. II, Third Edition, p. 1723.

[15]Kelly v. Laing, 242 N.W. 891, 892, 259 Mich. 212, Words and Phrases Permanent Edition 37 A, pp. 321-322.

[16]McFadden v. Jordan, 196 P 2d 787, 789, 797, 32 Cal. 2d 330.

are separate procedures, there is no constitutional mandate to "revise" the Constitution.

The Proposed Amendments If Ratified Do Not Mix With The Provisions Of The Constitution And Do Not Cause The Constitution To Be Re-written

It is my view that the phrase

"Such amendments shall be valid as part of this Constitution"

contemplates a situation where both the Constitution as originally written *remains intact* and where the *amendments* retain their identities as such amendments. The later as amendments do not delete the original provisions of the original Constitution by substituting the *words rendered inoperative* but become only *"as part of the Constitution."*

In other words, *the contexts of the amendments do not mix with the wordings of the Constitution by having the Constitution revised or re-written as to delete the words and/or provisions rendered inoperative and having in lieu thereof the workings of the amendments.*

Our Constitutional Guideline

The provision of our Constitution on amendments have been taken from the similar provisions of the United States Constitution which provides that —

> "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall *propose amendments to this Constitution*, or on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments which, in either case, *shall be valid to all intents and purposes, as part of this Constitution*, when ratified by the Legislatures of three-fourths of the several States, only the Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses on the Ninth Session of the First Article, and that no State without its consent shall be deprived of its equal suffrage on the Senate."[17]

The phrase *"propose amendments"* is in our Constitution. So with the words *"shall be valid"* [*to all intents and purposes*] *"as part of this Constitution."*

One has only to read the Constitution of the Philippines and the Constitution of the United States to understand that in intents and pur-

[17]U.S. Const. art. V.
[18]Const. art XV.

poses concerning "amendments" there is evidently no difference. Even the phrases *"propose amendments," "shall be valid"* and *"as part of this Constitution"* are the same.

The Amendments To The Constitution Of The United States

The amendments to the Constitution of the United States are clearly illustrated and shown in that instrument. For these amendments became "part of the Constitution" of the United States. There are now 25 amendments in all, which have become part of the Constitution of the United States, identified as "Articles on Amendments" with each amendment as "Article I," "Article II," etc., being consecutively numbered.

Thus, under the heading of such amendments, to wit

> *"ARTICLES IN ADDITION TO AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS AND RATIFIED BY THE SEVERAL LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION,"*

AMENDMENT [1][19] of the Constitution of the United States appears and exists, as written and ratified thus:

> "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

while AMENDMENT XIII, appears and exists, as written and ratified thus:

> Section 1. Neither slavery nor involuntary servitude except as a punishment for crime whereof the party have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.[20]

The Mistake In Our Case

The War (World War II) hastened the earlier "amendments" to our Constitution. But while we proposed the amendments and amended our Constitution, we were unable to comply correctly with the mandate of our Constitution, in the manner of showing that the "proposed amendments" and ratified by the people "become valid as parts of the Constitution." For what we did was to mix the amendments with the original workings of our Constitution and "rewrite our Constitution," so that

[19]Bracket enclosing an amendment number indicate that the number was not specifically assigned in the resolution proposing the amendment. It will be seen accordingly, that only Amendments XIII, XIV, XV, and XVI were thus technically ratified by number. (U.S. Senate Manual, etc., 1967 Edition p. 547).

[20]*Ibid.*, p. 552.

today we do not show in our Constitution the *original document* as drafted by our constitutional delegates and neither the amendments which have become *"as parts of the Constitution."*

There is no Constitution as *originally drawn* and there are no amendments adopted which we can show "as part of this Constitution" unlike that of the Constitution of the United States where we borrowed the context and phraseology on "amendments."

We may again fall in the same error this time by pursuing the same procedure which could lead to consequences not desirable and not contemplated by the Constitution.

For *"re-writing"* a Constitution is doing in the second instance the same act which was done at first. It could cause the entire Constitution to be re-adopted and re-promulgated, which is not authorized by the Constitution nor by the legislative call. The forthcoming convention in 1971 is not the original convention in 1934 that drafted the present Constitution of the Philippines. This forthcoming constitutional convention is a *limited convention.* It is bound by the terms of the legislative call in accordance with the mandate of the existing Constitution in the manner of amending it.

> "The general rule is that an *amendment* to a constitution does not become effective as such *unless it has been duly adopted in accordance with the provisions of the existing constitution.*"[21]

> "The *procedure* and requirements established for the *amendment* of the fundamental law must be *strictly followed*[22] *and none of the requisite steps must be omitted.*"[23]

The constitutional mandate is merely "to propose amendments" which shall become valid *"as part of the Constitution"* when only ratified by the sovereign people.

But despite the ratification of the "proposed amendments," the Constitution remains "written" the way and in the manner they were originally written. The "proposed amendments" become valid "as parts of the Constitution" for there is *no constitutional directive or mandate under the provisions of our Constitution to write or make a new Constitution.*

It is the rule that the Constitution is written only once, adopted only once and promulgated only once. Subsequent changes in the manner

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[21]Ulter v. Moseley, 16 Idaho, 274 Pac. 1058, 133 A.S.R. 94, 18 Ann. Cas. 723, cited in 6 R.C.L., p. 31.

[22]State v. Tufly, 19 Nev. 391, 12 Pac. 835, 3 A.S.R. 895 cited in 6 R.C.L., p. 31.

[23]State v. Tooker, 15 Mont. 8, 37 Pac. 840, 25 L.R.A. 524, 6 R.C.L., p. 31.

of "proposed amendments" become valid only "as parts of the Constitution."[24]

As the Constitution is promulgated only once, there is no authority to *draw another,* to be *adopted and promulgated anew.*

CONCLUSION

For all the foregoing, therefore, the act of re-writing, revising, or "writing off" the Constitution is not *"proposing amendments"* to the Constitution and, therefore, a proposition which is not within the term of the resolution of both Houses of Congress and more so *not authorized by the Constitution.*

The view, therefore, that the Constitutional Convention in 1971 can *re-write, revise* or "write off" the present Constitution of the Philippines and make a new one is, accordingly, without legal and constitutional basis.

[24]Const. art. XV, sec. 1.