EN BANC

[G.R. No. L-34150. October 16, 1971.]

ARTURO M. TOLENTINO, *petitioner*, ***vs.*** **COMMISSION ON ELECTIONS, and THE CHIEF ACCOUNTANT, THE AUDITOR, and THE DISBURSING OFFICER OF THE 1971 CONSTITUTIONAL CONVENTION**, *respondents*, **RAUL S. MANGLAPUS, JESUS G. BARRERA, PABLO S. TRILLANA III, VICTOR DE LA SERNA, MARCELO B. FERNAN, JOSE Y. FERIA, LEONARDO SIGUION REYNA, VICTOR F. ORTEGA, and JUAN V. BORRA**, *intervenors*.

Arturo M. Tolentino in his own behalf.

Ramon A. Gonzales for respondents Chief Accountant and Auditor of the 1971 Constitutional Convention.

Emmanuel Pelaez, Jorge M. Juco and *Tomas L. Echivarre* for respondent Disbursing Officer of the 1971 Constitutional Convention.

Intervenors in their own behalf.

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; DETERMINATION OF PROPER ALLOCATION OF POWERS IN GOVERNMENT. — As early as Angara vs. Electoral Commission (63 Phil. 139, 157), this Court — speaking through one of the leading members of the Constitutional Convention and a respected professor of Constitutional Law, Dr. Jose P. Laurel — declared that "the judicial department is the only constitutional organ which can called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof."

2. CONSTITUTIONAL LAW; AMENDMENTS TO CONSTITUTION; POWER TO AMEND OR PROPOSE AMENDMENTS VESTED IN THE PEOPLE. — The power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress (Section 1, Art. VI, Constitution of the Philippines). It is part of the inherent powers of the people — is the repository of sovereignty in a republican state, such as ours (Section 1, Art. II, Constitution of the Philippines) — to make, and, hence, to amend their own Fundamental Law.

3. ID.; ID.; ID.; CONGRESS, AS CONSTITUENT ASSEMBLY ALSO EMPOWERED TO PROPOSE AMENDMENTS. — Congress may propose amendments to the Constitution merely because the same explicitly grants such power (Sec. 1, Art. XV. Constitution of the Philippines). Hence, when exercising the same, it is said that Senators and members of the House of Representatives act, not as members of Congress, but as component elements of a constituent assembly. When acting as such, the members of Congress derive their authority from the Constitution, unlike the people, when performing the same function, (Of amending the Constitution) for their authority does not emanate from the Constitution —

they are the very source of all powers of government, including the Constitution itself .

4. ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF ACTS, JUSTICIABLE, NOT POLITICAL QUESTION. — 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 vs. Lopez Vito, (supra) the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point.

5. ID.; ID.; ID.; ID.; EFFECTIVITY OF PROPOSED AMENDMENTS DEPENDENT ON PEOPLE'S RATIFICATION. — True it is that once convened, the Constitutional Convention became endowed with extraordinary powers generally beyond the control of any department of the existing government, but the compass of such powers can be co-extensive only with the purpose for which the convention was called and as it is self-evident that the amendments it may propose cannot have any effect as part of the Constitution until the same are duly ratified by the people, it necessarily follows that the acts of the convention, its officers and members are not immune from attack on constitutional grounds. The present Constitution is in full force and effect in its entirely and in everyone of its parts, the existence of the Convention notwithstanding, and operates even within the walls of that assembly.

6. ID.; ID.; ID.; ID.; EXTENT THEREOF. — While it is indubitable that in its internal operation and the performance of its task to propose amendments to the Constitution it is not subject to any degree of restraint or control by any other authority than itself, it is equally beyond cavil that neither the Convention nor any of its officers or members can rightfully deprive any person of life, liberty or property without due process of law, deny to anyone in this country the equal protection of the laws or the freedom of speech and of the press in disregard of the Bill of Rights of the existing Constitution. Nor, for that matter, can such Convention validly pass any resolution providing for the taking of private property without just compensation or for the imposition or exacting of any tax, impost, or assessment, or declare war or call the Congress to a special session, suspend the privilege of the writ of habeas corpus, pardon a convict or render judgment in a controversy between private individuals or between such individuals and the state, in violation of the distribution of powers in the Constitution.

7. POLITICAL LAW; JUDICIARY; "JUDICIAL SUPREMACY" OR POWER OF JUDICIAL REVIEW. — When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

8. ID.; ID.; ID.; LIMITATIONS. — This power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to strike conclusions unrelated to actualities. Narrowed as its functions is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but

also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

9. POLITICAL LAW; ELECTORAL COMMISSION; POWER AND LIMITATIONS THEREOF. — The Electoral Commission, is a constitutional organ, created for a specific purpose, namely, to determine all contests resulting to the elections, returns and qualifications of the members of the National Assembly. Although the Electoral Commission may not be interfered with, when and while acting within the limits of its authority, it does not follow that it is beyond the reach of the constitutional mechanism adopted by die people and that it is not subject to constitutional restriction. The Electoral Commission is not a separate department of the government, and even if it were, conflicting claims of authority under the fundamental law between departmental powers and agencies of the government are necessarily determined by the judiciary in justiciable and appropriate cases.

10. CONSTITUTIONAL LAW; SECTION 1, ARTICLE XV OF CONSTITUTION; CONGRESS AS CONSTITUENT ASSEMBLY; PROPOSED AMENDMENTS, SUBJECT TO RATIFICATION BY PEOPLE; ONLY ONE ELECTION TO BE HELD THEREFOR. — The language of Section 1 of Article XV of the Constitution is sufficiently clear. It says distinctly that either Congress sitting as a constituent assembly or a convention called for the purpose "may propose amendments to this Constitution," thus placing no limit as to the number of amendments that Congress or the Convention may propose. The same provision also as definitely provides that "such amendments shall be valid as part of the this Constitution when approved by a majority of the votes cast as an election at which the amendments are submitted to the people for their ratification," thus leaving no room for doubt as to how many "elections" or plebiscites may be held to ratify any amendment or amendments proposed by the same constituent assembly of Congress or convention, and the provision unequivocally says "an election" which means only one.

REYES, J.B.L., ZALDIVAR, RUIZ CASTRO and MAKASIAR, JJ., concurring:

1. CONSTITUTIONAL LAW; AMENDMENTS TO CONSTITUTION; REQUIREMENTS FOR PROPER SUBMISSION THEREOF TO PEOPLE. — Amendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word "submitted" can only mean that the government, within its maximum capabilities, should strain every efforts to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. By this, we are not to be understood as saying that, if one citizen or 100 citizens cannot be reached, then there is no submission within the meaning of the word as intended by the framers of the Constitution. 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 or rejection. For as we have earlier stated, one thing is submission and another is ratification. There must be fair submission, intelligent consent or rejection.

FERNANDO, J., concurring and dissenting:

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; CONSTITUTIONAL CONVENTION, NOT SOVEREIGN IN CHARACTER. — It does not thereby follow that while free from legislative control, a constitutional convention may lay claim to an attribute sovereign in character. The Constitution is quite explicit that it is to the people, and to the people alone, in whom sovereignty resides. Such a prerogative is therefore withheld from a convention. It is an agency entrusted with the responsibility of high import and significance, it is true; it is denied unlimited legal competence though. That is what sovereignty connotes. It has to yield to the superior force of the Constitution. There can then be no basis for the exaggerated pretension that it is an alter ego of the people.

2. ID.; ID.; ID.; AUTONOMY IN PROPOSING CONSTITUTIONAL AMENDMENTS. — The view that commends itself for acceptance is that legislature and constitutional convention, aliked recognized by the Constitution, are coordinate, there being no superiority of one over the other. Insofar as the constituent power of proposing amendments to the Constitution is concerned, a constitutional convention enjoys a wide sphere of autonomy consistently with the Constitution which can be the only source of valid restriction on its competence. It is true it is to the legislative body that the call to a convention must proceed, but once convened, it cannot in any wise be interfered with, much less controlled by Congress. A contrary conclusion would impair its usefulness for the delicate and paramount task assigned to it. A convention then is to be looked upon as if it were one of the three coordinate departments which under the principle of separation of powers is supreme within its field and has exclusive cognizance of matters properly subject to its jurisdiction.

3. STATUTORY CONSTRUCTION, RULES OF GRAMMAR NOT DULY RELIABLE IN CONSTITUTIONAL INTERPRETATION. — No undue reliance should be accorded rules of grammar; they do not exert a compelling force in constitutional interpretation. Meaning is to be sought not from specific language in the singular but from the mosaic of significance derived from the total context. It could be, if it were not thus, self-defeating. Such a mode of construction does not commend itself. The words used in the Constitution are not inert; they derive vitality from the obvious purposes at which they are aimed.

D E C I S I O N

BARREDO, *J* :

Petition for prohibition principally to restrain the respondent Commission on Elections "from undertaking to hold a plebiscite on November 8, 1971," at which the proposed constitutional amendment "reducing the voting age" in Section 1 of Article V of the Constitution of the Philippines to eighteen years "shall be submitted" for ratification by the people pursuant to Organic Resolution No. 1 of the Constitutional Convention of 1971, and the subsequent implementing resolutions, by declaring said resolutions to be without the force and effect of law in so far as they direct the holding of such plebiscite and by also declaring the acts of the respondent Commission (COMELEC) performed and to be done by it in obedience to the aforesaid Convention resolutions to be null and void, for being violative of the Constitution of the Philippines.

As a preliminary step, since the petition named as respondent only the COMELEC, the Court required that copies thereof be served on the Solicitor General and the Constitutional Convention, through its President, for such action as they may deem proper

to take. In due time, respondent COMELEC filed its answer joining issues with petitioner. To further put things in proper order, and considering that the fiscal officers of the Convention are indispensable parties in a proceeding of this nature, since the acts sought to be enjoined involve the expenditure of funds appropriated by law for the Convention, the Court also ordered that the Disbursing Officer, Chief Accountant and Auditor of the Convention be made respondents. After the petition was so amended, the first appeared thru Senator Emmanuel Pelaez and the last two thru Delegate Ramon Gonzales. All said respondents, thru counsel, resist petitioner's action.

For reasons of orderliness and to avoid unnecessary duplication of arguments and even possible confusion, and considering that with the principal parties being duly represented by able counsel, their interests would be adequately protected already, the Court had to limit the number of intervenors from the ranks of the delegates to the Convention who, more or less, have legal interest in the success of the respondents, and so, only Delegates Raul S. Manglapus, Jesus G. Barrera, Pablo S. Trillana III, Victor de la Serna, Marcelo B. Fernan, Jose Y. Feria, Leonardo Siguion Reyna, Victor Ortega and Juan B. Borra, all distinguished lawyers in their own right, have been allowed to intervene jointly. The Court feels that with such an array of brilliant and dedicated counsel, all interests involved should be duly and amply represented and protected. At any rate, notwithstanding that their corresponding motions for leave to intervene or to appear as *amicus curiae* [1] have been denied, the pleadings filed by the other delegates and some private parties, the latter in representation of their minor children allegedly to be affected by the result of this case are with the records and the Court acknowledges that they have not been without value as materials in the extensive study that has been undertaken in this case.

The background facts are beyond dispute. The Constitutional Convention of 1971 came into being by virtue of two resolutions of the Congress of the Philippines approved in its capacity as a constituent assembly convened for the purpose of calling a convention to propose amendments to the Constitution, namely, Resolutions 2 and 4 of the joint sessions of Congress held on March 16, 1967 and June 17, 1969, respectively. The delegates to the said Constitution were all elected under and by virtue of said resolutions and the implementing legislation thereof, Republic Act 6132. The pertinent portions of Resolution No. 2 read as follows:

> "SECTION 1. There is hereby called a convention to propose amendments 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 Members of the House of Representatives.
>
> xxx xxx xxx
>
> "SECTION 7. The amendments proposed by the Convention shall be valid and considered part of the Constitution when approved by a majority of the votes cast in an election at which they are submitted to the people for their ratification pursuant to Article XV of the Constitution."

Resolution No. 4 merely modified the number of delegates to represent the different cities and provinces fixed originally in Resolution No. 2.

After the election of the delegates held on November 10, 1970, the Convention held its inaugural session on June 1, 1971. Its preliminary labors of election of officers, organization of committees and other preparatory works over, as its first formal proposal to amend the Constitution, its session which began on September 27, 1971, or more accurately, at about 3:30 in the morning of September 28, 1971, the Convention approved

Organic Resolution No. 1 reading thus:

"CC ORGANIC RESOLUTION NO. 1

"A RESOLUTION AMENDING SECTION ONE OF ARTICLE V OF THE CONSTITUTION OF THE PHILIPPINES SO AS TO LOWER THE VOTING AGE TO 18.

"BE IT RESOLVED as it is hereby resolved by the 1971 Constitutional Convention:

"Section 1. Section One of Article V of the Constitution of the Philippines is amended to as follows:

"Section 1. Suffrage may be exercised by (male) citizens of the Philippines not otherwise disqualified by law, who are (twenty-one) EIGHTEEN years or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election.'

"Section 2. This amendment shall be valid as part of the Constitution of the Philippines when approved by a majority of the votes cast in a plebiscite to coincide with the local elections in November 1971.

"Section 3. This partial amendment, which refers only to the age qualification for the exercise of suffrage shall be without prejudice to other amendments that will be proposed in the future by the 1971 Constitutional Convention on other portions of the amended Section or on other portions of the entire Constitution.

"Section 4. The Convention hereby authorizes the use of the sum of P75,000.00 from its savings or from its unexpended funds for the expense of the advanced plebiscite; provided, however that should there be no savings or unexpended sums, the Delegates waive P250.00 each or the equivalent of 2-1/2 days per diem.'"

By a letter dated September 28, 1971, President Diosdado Macapagal, called upon respondent Comelec "to help the Convention implement (the above) resolution." The said letter reads:

"September 28, 1971

"The Commission on Elections

Manila

Thru the Chairman

Gentlemen:

Last night the Constitutional Convention passed Resolution No. 1 quoted as follows:

xxx xxx xxx

(see above)

Pursuant to the provision of Section 14, Republic Act No. 6132 otherwise known as the Constitutional Convention Act of 1971, may we call upon you to help the Convention implement this resolution:

Sincerely,

(Sgd.) DIOSDADO P. MACAPAGAL

DIOSDADO P. MACAPAGAL

President"

On September 30, 1971, COMELEC "RESOLVED to inform the Constitutional Convention that it will hold the plebiscite on condition that:

> "(a) The Constitutional Convention will undertake the printing of separate official ballots, election returns and tally sheets for the use of said plebiscite at its expense;
>
> "(b) The Constitutional Convention will adopt its own security measures for the printing and shipment of said ballots and election forms; and
>
> "(c) Said official ballots and election forms will be delivered to the Commission in time so that they could be distributed at the same time that the Commission will distribute its official and sample ballots to be used in the elections on November 8, 1971."

What happened afterwards may best be stated by quoting from intervenors' statement of the genesis of the above proposal:

> "The President of the Convention also issued an order forming an Ad Hoc Committee to implement the Resolution.
>
> "This Committee issued implementing guidelines which were approved by the President who then transmitted them to the Commission on Elections.
>
> "The Committee on Plebiscite and Ratification filed a report on the progress of the implementation of the plebiscite in the afternoon of October 7, 1971, enclosing copies of the order, resolution and letters of transmittal above referred to (Copy of the report is hereto attached as Annex 8-Memorandum)
>
> "RECESS RESOLUTION
>
> "In its plenary session in the evening of October 7, 1971, the Convention approved a resolution authored by Delegate Antonio Olmedo of Davao Oriental, calling for a recess of the Convention from November 1, 1971 to November 9, 1971 to permit the delegates to campaign for the ratification of Organic Resolution No. 1. (Copies of the resolution and the transcript of debate thereon are hereto attached as Annexes 9 and 9-A Memorandum, respectively).
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> "RESOLUTION CONFIRMING IMPLEMENTATION
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> "On October 12, 1971, the Convention passed Resolution No. 24 submitted by Delegate Jose Ozamiz confirming the authority of the President of the Convention to implement Organic Resolution No. 1, including the creation of the Ad Hoc Committee ratifying all acts performed in connection with said implementation."

Upon these facts, the main thrust of the petition is that Organic Resolution No. 1 and the other implementing resolutions thereof subsequently approved by the Convention have no force and effect as laws in so far as they provide for the holding of a plebiscite co incident

with the elections of eight senators and all city, provincial and municipal Officials to be held on November 8, 1971, hence all of Comelec's acts in obedience thereof and tending to carry out the holding of the plebiscite directed by said resolutions are null and void, on the ground that the calling and holding of such a plebiscite is, by the Constitution, a power lodged exclusively in Congress, as a legislative body, and may not be exercised by the Convention, and that, under Section 1, Article XV of the Constitution, the proposed amendment in question cannot be presented to the people for ratification separately from each and all of the other amendments to be drafted and proposed by the Convention. On the other hand, respondents and intervenors posit that the power to provide for, fix the date and lay down the details of the plebiscite for the ratification of any amendment the Convention may deem proper to propose is within the authority of the Convention as a necessary consequence and part of its power to propose amendments and that this power includes that of submitting such amendments either individually or jointly at such time and manner as the Convention may direct in its discretion. The Court's delicate task now is to decide which of these two poses is really in accord with the letter and spirit of the Constitution.

As a preliminary and prejudicial matter, the intervenors raise the question of jurisdiction. They contend that the issue before Us is a political question and that the Convention being a legislative body of the highest order is sovereign, and as such, its acts impugned by petitioner are beyond the control of the Congress and the courts. In this connection, it is to be noted that none of the respondent has joined intervenors in this posture. In fact, respondents Chief Accountant and Auditor of the Convention, expressly concede the jurisdiction of this Court in their answer acknowledging that the issue herein is a justiciable one.

Strangely, intervenors cite in support of this contention portions of the decision of this Court in the case of Gonzales v. Comelec, 21 SCRA 774, wherein the members of the Court, despite their being divided in their opinions as to the other matters therein involved, were precisely unanimous in upholding its jurisdiction. Obviously, distinguished counsel have either failed to grasp the full impact of the portions of Our decision they have quoted or would misapply them by taking them out of context.

There should be no more doubt as to the position of this Court regarding its jurisdiction vis-a-vis the constitutionality of the acts of the Congress, acting as a constituent assembly, and, for that matter, those of a constitutional convention called for the purpose of proposing amendments to the Constitution, which concededly is at par with the former. A simple reading of Our ruling in that very case of *Gonzales* relied upon by intervenors should dispel any lingering misgivings as regards that point. Succinctly but comprehensively, Chief Justice Concepcion held for the Court thus:

> "As early as Angara vs. Electoral Commission (63 Phil. 139, 157), this Court — speaking through one of the leading members of the Constitutional Convention and a respected professor of Constitutional Law, Dr. Jose P. Laurel — declared that 'the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.'
>
> "It is true that in Mabanag v. Lopez Vito (*supra*), this Court characterizing the issue submitted thereto as a political one, declined to pass upon the question whether or not a given number of votes cast in Congress in favor of a proposed amendment to the Constitution — which was being submitted to the people for ratification — satisfied the three-fourths vote requirement of the fundamental law.

The force of this precedent has been weakened, however, by Suanes v. Chief Accountant of the Senate (81 Phil: 818), Avelino v. Cuenco, (L-2851, March 4 & 14, 1943), Tañada v. Cuenco, (L-10520, Feb. 28, 1957) and Macias v. Commission on Elections, (L-18684, Sept. 14, 1961). In the first we held that the officers and employees of the Senate Electoral Tribunal are under its supervision and control, not of that of the Senate President, as claimed by the latter; in the second, this Court proceeded to determine the number of Senators necessary for quorum in the Senate; in the third, we nullified the election, by Senators belonging to the party having the largest number of votes in said chamber, purporting to act, on behalf of the party having the second largest number of votes therein of two (2) Senators belonging to the first party, as members, for the second party, of the Senate Electoral Tribunal; and in the fourth, we declared unconstitutional an act of Congress purporting to apportion the representatives districts for the House of Representatives, upon the ground that the apportionment had not been made as may be possible according to the number of inhabitants of each province. Thus we rejected the theory, advanced in these four (4) cases that the issues therein raised were political questions the determination of which is beyond judicial review.

"Indeed, the power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress (Section 1. Art. VI, Constitution of the Philippines). It is part of the inherent powers *of the people* — as the repository sovereignty in a republican state, such as ours (Section 1, Art, II, Constitution of the Philippines) — to make, and, hence, to amend their own Fundamental Law. Congress may propose amendments to the Constitution merely because the same explicitly grants such power. (Section 1, Art. XV, Constitution of the Philippines) Hence, when exercising the same it is said that Senators and members of the House of Representatives act, not as members of Congress, but as component elements of a *constituent assembly.* When acting as such, the members of Congress derive their authority from the Constitution, unlike the people, when performing the same function, (Of amending the Constitution) for their authority does not emanate from the Constitution — they are *the very source* of all powers of government *including the Constitution itself* .

"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, (And, inferentially, to lower courts.) the power to declare a treaty unconstitutional. (Sec. 2 (1), Art. VIII of the Constitution), despite the eminently political character of 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, (*supra*) the latter should be deemed modified accordingly. The Members of the Court are unanimous on this point."

No one can rightly claim that within the domain of its legitimate authority, the Convention is not supreme. Nowhere in his petition and in his oral argument and memoranda does

petitioner point otherwise. Actually, what respondents and intervenors are seemingly reluctant to admit is that the Constitutional Convention of 1971, as any other convention of the same nature, owes its existence and derives all its authority and power from the existing Constitution of the Philippines. This Convention has not been called by the people directly as in the case of a revolutionary convention which drafts the first Constitution of an entirely new government born of either a war of liberation from a mother country or of a revolution against an existing government or of a bloodless seizure of power *a la coup d'etat*. As to such kind of conventions, it is absolutely true that the convention is completely without restrain and omnipotent all wise, and it is as to such conventions that the remarks of Delegate Manuel Roxas of the Constitutional Convention of 1934 quoted by Senator Pelaez refer. No amount of rationalization can belie the fact that the current convention came into being only because it was called by a resolution of a joint session of Congress acting as a constituent assembly by authority of Section 1, Article XV of the present Constitution which provides:

"ARTICLE XV — AMENDMENTS

> "SECTION 1. 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 the 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."

True it is that once convened, this Convention became endowed with extraordinary powers generally beyond the control of any department of the existing government, but the compass of such powers can be co-extensive only with the purpose for which the convention was called and as it may propose cannot have any effect as part of the Constitution until the same are duly ratified by the people, it necessarily follows that the acts of convention, its officers and members are not immune from attack on constitutional grounds. The present Constitution is in full force and effect in its entirety and in everyone of its parts, the existence of the Convention notwithstanding, and operates even within the walls of that assembly. While it is indubitable that in its internal operation and the performance of its task to propose amendments to the Constitution it is not subject to any degree of restraint or control by any other authority than itself, it is equally beyond cavil that neither the Convention nor any of its officers or members can rightfully deprive any person of life, liberty or property without due process of law, deny to anyone in this country the equal protection of the laws or the freedom of speech and of the press in disregard of the Bill of Rights of the existing Constitution. Nor, for that matter, can such Convention validly pass any resolution providing for the taking of private property without just compensation or for the imposition or exacting of any tax, import or assessment, or declare war or call the Congress to a special session, suspend the privilege of the writ of habeas corpus, pardon a convict or render judgment in a controversy between private individuals or between such individuals and the state, in violation of the distribution of powers in the Constitution.

It being manifest that there are powers which the Convention may not and cannot validly assert, much less exercise, in the light of the existing Constitution, the simple question arises, should an act of the Convention be assailed by a citizen as being among those not granted to or inherent in it, according to the existing Constitution, who can decide whether such a contention is correct or not? It is of the very essence of the rule of law that

somehow somewhere the power and duty to resolve such a grave constitutional question must be lodged on some authority, or we would have to confess that the integrated system of government established by our founding fathers contains a wide vacuum no intelligent man could ignore, which is naturally unworthy of their learning, experience and craftmanship in constitution-making.

We need not go far in search for the answer *to the* query We have posed. The very decision of Chief Justice Concepcion in Gonzales, so much invoked by intervenors, reiterates and reenforces the irrefutable logic and wealth of principle in the opinion written for a unanimous Court by Justice Laurel in Angara vs. Electoral Commission, 63 Phil., 134, reading:

> ". . . (I)n the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmark of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.
>
> "As any human production our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of check and balances and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and *agencies*. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment and the principles of good government mere political apothegms. Certainly the limitations and restrictions embodied in our Constitution are real as they should be in any living Constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there. has been set at rest by popular acquiescence for a period of more than one and half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of Article VIII of our Constitution.
>
> "The Constitution is a definition of the powers or government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed 'judicial supremacy' which properly is the power of

judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to strike conclusions unrelated to actualities. Narrowed as its functions is in this manner the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

"But much as we might postulate on the internal checks of power provided in our Constitution, it ought not the less to be remembered that. in the language of James Madison, the system itself is not 'the chief palladium of constitutional liberty.. the people who are authors of this blessing must also be its guardians.. their eyes must be ever ready to mark, their voices to pronounce. . . aggression on the authority of their Constitution.' In the last and ultimate analysis then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers.

"In the case at bar, the National Assembly has by resolution (No. 8) of December 3, 1935, confirmed the election of the herein petitioner to the said body. On the other hand. the Electoral Commission has by resolution adopted on December 9, 1935, fixed said date as the last day for the filing of protests against the election, returns and qualifications of members of the National Assembly; notwithstanding the Previous confirmations made by the National Assembly as aforesaid. If, as contended by the petitioner, the resolution of the National Assembly has the effect of cutting off the power of the Electoral Commission to entertain protests against the election, returns and qualifications of members of the National Assembly, submitted after December 3, 1935 then the resolution of the Electoral Commission of December 9, 1935, is mere surplusage and had no effect. But, if, as contended by the respondents, the Electoral Commission has the sole power of regulating its proceedings to the exclusion of the National Assembly, then the resolution of December 9, 1935, by which the Electoral Commission fixed said date as the last day for filing protests against the election, returns and qualifications of members of the National Assembly, should be upheld.

"Here is then presented an actual controversy involving as it does a conflict of a grave constitutional nature between the National Assembly on the one hand and the Electoral Commission on the other. From the very nature of the republican government established in our country in the light of American experience and of our own, upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries. The Electoral Commission as we shall have occasion to refer hereafter, is a constitutional organ, created for a specific purpose, namely, to determine all contests relating to the election, returns and qualifications of the members of the National Assembly. Although the Electoral Commission may not be interfered with, when and while acting within the limits of its authority, it does not follow that it is beyond the reach of the constitutional mechanism adopted by the People and that it is not subject to constitutional restriction. The Electoral Commission is not a separate department of the government, and even if it were, conflicting

> claims of authority under the fundamental law between departmental powers and agencies of the government are necessarily determined by the judiciary in justiciable and appropriate cases. Discarding the English type and other European types of constitutional government, the framers of our Constitution adopted the American type where the written constitution is interpreted and given effect by the judicial department. In some countries which have declined to follow the American example, provisions have been inserted in their constitutions prohibiting the courts from exercising the power to interpret the fundamental law. This is taken as a recognition of what otherwise would be the rule that in the absence of direct prohibition, courts are bound to assume what is logically their function. For instance, the Constitution of Poland of 1921 expressly provides that courts shall have no power to examine the validity of statutes (art. 81, Chap. IV). The former Austrian Constitution contained a similar declaration. In countries whose constitution are silent in this respect, courts have assumed this power. This is true in Norway, Greece, Australia and South Africa. Whereas, in Czechoslovakia (arts. 2 and 3, Preliminary Law to Constitutional Charter of the Czechoslovak, Republic, February 29, 1920) and Spain (arts. 121-123, Title IX, Constitution of the Republic of 1931) especial constitutional courts are established to pass upon the validity of ordinary laws. In our case, the nature of the present controversy shows the necessity of a final constitutional arbiter to determine the conflict of authority between two agencies created by the Constitution. Were we to decline to take cognizance of the controversy, who will determine the conflict? And if the conflict were left undecided and undetermined, would not a void be thus created in our constitutional system which may in the long run prove destructive of the entire framework? To ask these questions is to answer them. *Natura vacuum abhorret,* so must we avoid exhaustion in our constitutional system. Upon principle, reason, and authority, we are clearly of the opinion that upon the admitted facts of the present case, this court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as 'the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

As the Chief Justice has made it clear in *Gonzales,* like Justice Laurel did in *Angara,* these postulates just quoted do not apply only to conflicts of authority between the three existing regular departments of the government but to all such conflicts between and among these departments, or, between any of them, on the one hand, and any other constitutionally created independent body, like the electoral tribunals in Congress, the Comelec and the constituent assemblies constituted by the House of Congress, on the other. We see no reason of logic or principle whatsoever, and none has been convincingly shown to Us by any of the respondents and intervenors, why the same ruling should not apply to the present Convention, even if it is an assembly of delegates elected directly by the people, since at best, as already demonstrated, it has been convened by authority of and under the terms of the present Constitution.

Accordingly, We are left with no alternative but to uphold the jurisdiction of the Court over the present case. It goes without saying that We do this not because the Court is superior to the Convention or that the Convention is subject to the control of the Court, but simply because both the Convention and the Court are subject to the Constitution and the rule of law, and "upon principle, reason and authority," per Justice Laurel, *supra,* it is within the power, as it is the solemn duty of the Court, under the existing Constitution to resolve the

issues in which petitioner, respondents and intervenors have joined in this case.

II

The issue of jurisdiction thus resolved, We come to the crux of the petition. Is it within the powers of the Constitutional Convention of 1971 to order, on its own fiat. the holding of a plebiscite for the ratification of the proposed amendment reducing to eighteen years the age for the exercise of suffrage under Section 1 of Article V of the Constitution proposed in the Convention's Organic Resolution No. 1 in the manner and form provided for in said resolution and the subsequent implementing acts and resolution of the Convention?

At the threnold, the environmental circumstances of this case demand the most accurate and unequivocal statement of the real issue which the Court is called upon to resolve. Petitioner has very clearly stated that he is not against the constitutional extension of the right of suffrage to the eighteen-year-olds, as a matter of fact, he has advocated or sponsored in Congress such a proposal, and that, in truth, the herein petition is not intended by him to prevent that the proposed amendment here involved be submitted to the people for ratification, his only purpose in filing the petition being to comply with his sworn duty to prevent, whenever he can, any violation of the Constitution of the Philippines even if it is committed in the course of or in connection with the most laudable undertaking. Indeed, as the Court sees it, the specific question raised in this case is limited solely and only to the point of whether or not it is within the power of the Convention to call for a plebiscite for the ratification by the people of the constitutional amendment proposed in the abovequoted Organic Resolution No. 1, in the manner and form provided in said resolution as well as in the subsequent implementing actions and resolution of the Convention and its officers, at this juncture of its proceedings, when, as it is a matter of common knowledge and judicial notice, it is not set to adjourn *sine die,* and is, in fact, still in the preliminary stages of considering other reforms or amendments affecting other parts of the existing Constitution; and, indeed, Organic Resolution No. 1 itself expressly provides that the amendment therein proposed "shall be without prejudice to other amendments that will be proposed in the future by the 1971 Constitutional Convention on other portions of the amended section or on other portions of the entire Constitution." In other words, nothing that the Court may say or do in this case should be understood as reflecting, in any degree or means, the individual or collective stand of the members of the Court on the fundamental issue of whether or not the eighteen-year-olds should be allowed to vote, simply because that issue is not before Us now. There should be no doubt in the mind of anyone that, once the Court finds it constitutionally permissible, it will not hesitate to do its part so that the said proposed amendment may be presented to the people for their approval or rejection.

Withal, the Court rests securely in the conviction that the fire and enthusiasm of the youth have not blinded them to the absolute necessity, under the fundamental principles of democracy to which the Filipino people is committed, of adhering always to the rule of law. Surely, their idealism, sincerity and purity of purpose cannot permit any other line of conduct or approach in respect of the problem before Us. The Constitutional Convention of 1971 itself was born, in a great measure, because of the pressure brought to bear upon the Congress of the Philippines by various elements of the people, the youth in particular, in their incessant search for a peaceful and orderly means of bringing about meaningful changes in the structure and bases of the existing social and governmental institutions, including the provisions of the fundamental law related to the well-being and economic security of the underprivileged classes of our people as well as those concerning the preservation and protection of our natural resources and the national patrimony, as an

alternative to violent and chaotic ways of achieving such lofty ideals. In brief, leaving aside the excesses of enthusiasm which at times have justifiably or unjustifiably marred the demonstrations in the streets, plazas and campuses, the youth of the Philippines, in general, like the rest of the people, do not want confusion and disorder, anarchy and violence; what they really want are law and order, peace and orderliness, even in the pursuit of what they strongly and urgently feel must be done to change the present order of things in this Republic of ours. It would be tragic and contrary to the plain compulsion of these perspectives, if the Court were to allow itself in deciding this case to be carried astray by considerations other than the imperatives of the rule of law and of the applicable provisions of the Constitution. Needless to say, in a larger measure than when it binds other departments of the government or any other official or entity, the Constitution imposes upon the Court the sacred duty to give meaning and vigor to the Constitution, by interpreting and construing its provisions in appropriate cases with the proper parties and by striking down any act violative thereof. Here, as in all other cases, We are resolved to discharge that duty.

During these times when most anyone feels very strongly the urgent need for constitutional reforms, to the point of being convinced that meaningful change is the only alternative to a violent revolution, this Court would be the last to put any obstruction or impediment to the work of the Constitutional Convention. If there are respectable sectors opining that it has not been called to supplant the existing Constitution in its entirety, since its enabling provision, Article XV, from which the Convention itself draws life expressly speaks only of amendments which shall form part of it, which opinion is not without persuasive force both in principle and in logic, the seemingly prevailing view is that only the collective judgment of its members as to what is warranted by the present condition of things, as they see it, can limit the extent of the constitutional innovations the Convention may propose, hence the complete substitution of the existing constitution is not beyond the ambit of the Convention's authority. Desirable as it may be to resolve this grave divergence of views, the Court does not consider this case to be properly the one in which it should discharge its constitutional duty in such premises. The issues raised by petitioner, even those among them in which respondents and intervenors have joined in an apparent wish to have them squarely passed upon by the Court do not necessarily impose upon Us the imperative obligation to express Our views thereon. The Court considers it to be of the utmost importance that the Convention should be untrammelled and unrestrained in the performance of its constitutionally assigned mission in the manner and form it may conceive best, and so the Court may step in to clear up doubts as to the boundaries set down by the Constitution only when and to the specific extent only that it would be necessary to do so to avoid a constitutional crisis or a clearly demonstrable violation of the existing Charter. Withal, it is a very familiar principle of constitutional law that constitutional questions are to be resolved by the Supreme Court only when there is no alternative but to do it, and this rule is founded precisely on the principle of respect that the Court must accord to the acts of the other coordinate departments of the government, and certainly, the Constitutional Convention stands almost in a unique footing in that regard.

In our discussion of the issue of jurisdiction, We have already made it clear that the Convention came into being by a call of a joint session of Congress pursuant to Section 1 of Article XV of the Constitution, already quoted earlier in this opinion. We reiterate also that as to matters not related to its internal operation and the performance of its assigned mission to propose amendments to the Constitution, the Convention and its officers and members are all subject to all the provisions of the existing Constitution. Now We hold that

even as to its latter task of proposing amendments to the Constitution, it is subject to the provisions of Section 1 of Article XV. This must be so, because it is plain to Us that the framers of the Constitution took care that the process of amending the same should not be undertaken with the same ease and facility in changing an ordinary legislation. Constitution making is the most valued power, second to none, of the people in a constitutional democracy such as the one our founding fathers have chosen for this nation, and which we of the succeeding generations generally cherish. And because the Constitution affects the lives, fortunes, future and every other conceivable aspect of the lives of all the people within the country and those subject to its sovereignty, every degree of care is taken in preparing and drafting it. A constitution worthy of the people for which it is intended must not be prepared in haste without adequate deliberation and study. It is obvious that correspondingly, any amendment of the Constitution is of no less importance than the whole Constitution itself, and perforce must be conceived and prepared with as much care and deliberation. From the very nature of things, the drafters of an original constitution, as already observed earlier, operate without any limitations, restraints or inhibitions save those that they may impose upon themselves. This is not necessarily true of subsequent conventions called to amend the original constitution. Generally, the framers of the latter see to it that their handiwork is not lightly treated and as easily mutilated or changed, not only for reasons purely personal but more importantly, because written constitutions are supposed to be designed so as to last for some time, if not for ages, or for, at least, as long as they can be adopted to the needs and exigencies of the people, hence, they must be insulated against precipitate and hasty actions motivated by more or less passing political moods or fancies. Thus, as a rule, the original constitutions carry with them limitations and conditions, more or less stringent, made so by the people themselves, in regard to the process of their amendment. And when such limitations or conditions are so incorporated in the original constitution, it does not lie in the delegates of any subsequent convention to claim that they may ignore and disregard such conditions because they are as powerful and omnipotent as their original counterparts.

Nothing of what is here said is to be understood as curtailing in any degree the number and nature and the scope and extent of the amendments the Convention may deem proper to propose. Nor does the Court propose to pass on the issue extensively and brilliantly discussed by the parties as to whether or not the power or duty to call a plebiscite for the ratification of the amendments to be proposed by the Convention is exclusively legislative and as such may be exercised only by the Congress or whether the said power can be exercised concurrently by the Convention with the Congress. In the view the Court takes of ;the present case, it does not perceive absolute necessity to resolve that question, grave and important as it may be Truth to tell, the lack of unanimity or even of a consensus among the members of the Court in respect to this issue creates the need for more study and deliberation, and as time is of the essence in this case, for obvious reasons, November 8, 1971, the date set by the Convention for the plebiscite it is calling, being nigh, We will refrain from making any pronouncement or expressing Our views on this question until a more appropriate case comes to Us. After all, the basis of this decision is as important and decisive as any can be.

The ultimate question, therefore, boils down to this: Is there any limitation or condition in Section 1 of Article XV of the Constitution which is violated by the act of the Convention of calling for a plebiscite on the sole amendment contained in Organic Resolution No. 1? The Court holds that there is, and it is the condition and limitation that all the amendments to be proposed by the same Convention must be submitted to the people in a single

"election" or plebiscite. It being indisputable that the amendment now proposed to be submitted to a plebiscite is only the first amendment the Convention will propose We hold that the plebiscite being called for the purpose of submitting the same for ratification of the people on November 8, 1971 is not authorized by Section 1 of Article XV of the Constitution, hence all acts of the Convention and the respondent Comelec in that direction are null and void.

We have arrived at this conclusion for the following reasons:

1. The language of the constitutional provision aforequoted is sufficiently clear. It says distinctly that either Congress sitting as a constituent assembly or a convention called for the purpose "may propose amendments to this Constitution, "thus placing no limit as to the number of amendments that Congress or the Convention may propose. The same provision also as definitely 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," thus leaving no room for doubt as to how many "elections" or plebiscites may be held to ratify any amendment or amendments proposed by the same constituent assembly of Congress or convention, and the provision unequivocably says "an election" which means only one.

(2) Very little reflection is needed for anyone to realize the wisdom and appropriateness of this provision. As already stated, amending the Constitution is as serious and important an undertaking as constitution making itself. Indeed, any amendment of the Constitution is as important as the whole of it, if only because the Constitution has to be an integrated and harmonious instrument, if it is to be viable as the framework of the government it establishes, on the one hand, and adequately formidable and reliable as the succinct but comprehensive articulation of the rights, liberties, ideology, social ideals, and national and nationalistic policies and aspirations of the people, on the other. It is inconceivable how a constitution worthy of any country or people can have any part which is out of tune with its other parts.

A constitution is the work of the people thru its drafters assembled by them for the purpose. Once the original constitution is approved, the part that the people play in its amendment becomes harder, for when a whole constitution is submitted to them, more or less they can assume its harmony as an integrated whole, and they can either accept or reject it in its entirety. At the very least, they can examine it before casting their vote and determine for themselves from a study of the whole document the merits and demerits of all or any of its parts and of the document as a whole. And so also, when an amendment is submitted to them that is to form part of the existing constitution, in like fashion they can study with deliberation the proposed amendment in relation to the whole existing constitution and or any of its parts and thereby arrive at an intelligent judgment as to its acceptability.

This cannot happen in the case of the amendment in question. Prescinding already from the fact that under Section 3 of the questioned resolution, it is evident that no fixed frame of reference is provided the voter, as to what finally will be concomitant qualifications that will be required by the final draft of the constitution to be formulated by the Convention of a voter to be able to enjoy the right of suffrage, there are other considerations which make it impossible to vote intelligently on the proposed amendment, although it may already be observed that under Section 3, if a voter would favor the reduction of the voting age to eighteen under conditions he feels are needed under the circumstances, and he does not see those conditions in the ballot nor is there any possible indication whether they will ever

be or not, because Congress has reserved those for future action, what kind of judgment can he render on the proposal?

But the situation actually before Us is even worse. No one knows what changes in the fundamental principles of the constitution the Convention will be minded to approve. To be more specific, we do not have any means of foreseeing whether the right to vote would be of any significant value at all. Who can say whether or not later on the Convention may decide to provide for varying types of voters for each level of the political units it may divide the country into. The root of the difficulty in other words, lies in that the Convention is precisely on the verge of introducing substantial changes, if not radical ones, in almost every part and aspect of the existing social and political order enshrined in the present Constitution. How can a voter in the proposed plebiscite intelligently determine the effect of the reduction of the voting age upon the different institutions which the Convention may establish and of which presently he is not given any idea?

We are certain no one can deny that in order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment *per se* as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole. In the context of the present state of things, where the Convention has hardly started considering the merits of hundreds, if not thousands, of proposals to amend the existing Constitution, to present to the people any single proposal or a few of them cannot comply with this requirement. We are of the opinion that the present Constitution does not contemplate in Section 1 of Article XV a plebiscite or "election" wherein the people are in the dark as to frame of reference they can base their judgment on. We reject the rationalization that the present Constitution is a possible frame of reference, for the simple reason that intervenors themselves are stating that the sole purpose of the proposed amendment is to enable the eighteen year olds to take part in the election for the ratification of the Constitution to be drafted by the Convention. In brief, under the proposed plebiscite, there can be, in the language of Justice Sanchez, speaking for the six members of the Court in Gonzales, *supra,* "no proper submission"

III

The Court has no desire at all to hamper and hamstring the noble work of the Constitutional Convention. Much less does the Court want to pass judgment on the merits of the proposal to allow these eighteen years old to vote. But like the Convention, the Court has its own duties to the people under the Constitution which is to decide in appropriate oases with appropriate parties whether or not the mandates of the fundamental law are being complied with. In the best light God has given Us, we are of the conviction that in providing for the questioned plebiscite before it has finished, and separately from, the whole draft of the constitution it has been called to formulate, the Convention's Organic Resolution No. 1 and all subsequent acts of the Convention implementing the same violate the condition in Section 1, Article XV that there should only be one "election" or plebiscite for the ratification of all the amendments the Convention may propose. We are not denying any right of the people to vote on the proposed amendment; We are only holding that under Section 1, Article XV of the Constitution, the same should be submitted to them not separately from but together with all the other amendments to be proposed by this present Convention.

IN VIEW OF ALL THE FOREGOING, the petition herein is granted. Organic Resolution No. 1 of the Constitutional Convention of 1971 and the implementing acts and resolutions of the

Convention, insofar as they provide for the holding of a plebiscite on November 8, 1971, as well as the resolution of the respondent Comelec complying therewith (RR Resolution No. 695) are hereby declared null and void. The respondents Comelec, Disbursing Officer, Chief Accountant and Auditor of the Constitutional Convention are hereby enjoined from taking any action in compliance with the said organic resolution. In view of the peculiar circumstances of this case, the Court declares this decision immediately executory. No costs.

Concepcion, C . J ., Teehankee, Villamor and *Makasiar, JJ .*, concur.

Separate Opinions

MAKALINTAL, *J .,*

I reserve my vote. The resolution in question is voted down by a sufficient majority of the Court on just one ground, which to be sure achieves the result from the legal and constitutional viewpoint. I entertain grave doubts as to the validity of the premises postulated and conclusions reached in support of the dispositive portion of the decision. However, considering the urgent nature of this case, the lack of time to set down at length my opinion on the particular issue upon which the decision is made to rest, and the fact that a dissent on the said issue would necessarily be inconclusive unless the other issues raised in the petition are also considered and ruled upon — a task that would be premature and pointless at this time — I limit myself to this reservation.

REYES, J.B.L., ZALDIVAR, CASTRO and MAKASIAR, *JJ ., concurring*:

We concur in the main opinion penned by Mr. Justice Barredo in his usual inimitable, forthright and vigorous style. Like him, we do not express our individual views on the *wisdom* of the proposed constitutional amendment, which is not in issue here because it is a matter that properly and exclusively addresses itself to the collective judgment of the people.

We must, however, articulate two additional objections of constitutional dimension which, although they would seem to be superfluous because of the reach of the basic constitutional infirmity discussed in *extenso* in the main opinion, nevertheless appear to us to be just as fundamental in character and scope.

Assuming that the Constitutional Convention has power to propose piecemeal amendments and submit each separately to the people for ratification, we are nonetheless persuaded that (1) that there is no *proper submission* of the proposed amendment in question within the meaning and intendment of Section 1 of Article XV of the Constitution, and (2) that the forthcoming election is *not* the *proper election* envisioned by the same provision of the Constitution.

Mr. Justice C. V. Sanchez, in his dissent in *Gonzales vs. Commission on Elections* [1] and *Philippine Constitution Association vs. Commission on Elections,* [2] expounded his view, with which we essentially agree, on the minimum requirements that must be met in order that there can be a *proper submission* to the people of a proposed constitutional amendment. This is what he said:

". . . amendments must be fairly laid before the people for their blessing or spurning. The people are not to be mere rubber stamps. They are not to vote blindly. They must be afforded ample opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influences. We believe the word 'submitted' can only mean that the government, within its maximum capabilities, should strain every effort to inform citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. By this, we are not to be understood as saying that, if one citizen or 100 citizens or 1,000 citizens cannot he reached, then there is no submission within the meaning of the word as intended by the framers of the Constitution. 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 or rejection. For we have earlier stated, one thing is *submission* and another is *ratification*. There must be fair submission, intelligent consent or rejection."

The second constitutional objection was given expression by one of the writers [3] of this concurring opinion, in the following words:

"I find it impossible to believe that it was ever intended by its framers that such amendment should be submitted and ratified by just 'a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification', if the concentration of the people's attention thereon is to be diverted by other extraneous issues, such as the choice of local and national officials. The framers of the Constitution, aware of the fundamental character thereof, and of the need of giving it as much stability as is practicable, could have only meant that any amendments thereto should be debated, considered and voted upon an election wherein the people could devote undivided attention to the subject." [4]

True it is that the question posed by the proposed amendment, "Do you or do you not want the 18-year old to be allowed to vote?," would seem to be uncomplicated and innocuous. But it is one of life's verities that things which appear to be simple may turn out not to be so simple after all.

A number of doubts or misgivings could conceivably and logically assail the average voter. Why should the voting age be lowered at all, in the first place? Why should the new voting age be precisely 18 years, and not 19 or 20? And why not 17? Or even 16 or 15? Is the 18-year old as mature as the 21-year old so that there is no need of an educational qualification to entitle him to vote? In this age of permissiveness and dissent, can the 18-year old be relied upon to vote with judiciousness when the 21-year old, in the past elections, has not performed so well? If the proposed amendment is voted down by the people, will the Constitutional Convention insist on the said amendment? Why is there an unseemly haste on the part of the Constitutional Convention in having this particular proposed amendment ratified at this particular time? Do some of the members of the Convention have future political plans which they want to begin to subserve by the approval this year of this amendment? If this amendment is approved, does it thereby mean that the 18-year old should now also shoulder the moral and legal responsibilities of the 21-year old? Will he be required to render compulsory military service under the colors? Will the age of contractual consent be reduced to 18 years? If I vote against this amendment, will I not be unfair to my own child who will be 18 years old, come 1973?

The above are just samplings from here, there and everywhere — from a domain (of

searching questions) the bounds of which are not immediately ascertainable. Surely, many more questions can be added to the already long litany. And the answers cannot be had except as the questions are debated fully, pondered upon purposefully, and accorded undivided attention.

Scanning the contemporary scene, we say that the people are not, and by election time will not be, sufficiently informed of the meaning, nature and effects of the proposed constitutional amendment. They have not been afforded ample time to deliberate thereon conscientiously. They have been and are effectively distracted from a full and dispassionate consideration of the merits and demerits of the proposed amendment by their traditional pervasive involvement in local elections and politics. They cannot thus weigh in tranquillity the need for and the wisdom of the proposed amendment.

Upon the above disquisition, it is our considered view that the intendment of the words, "at an election at which the amendments are submitted to the people for their ratification," embodied in Section 1 of Article XV of the Constitution, has not been met.

FERNANDO, *J., concurring and dissenting*:

There is much to be said for the opinion of the Court penned by Justice Barredo, characterized by clarity and vigor, its manifestation of fealty to the rule of law couched in eloquent language, that commands assent. As the Constitution occupied the topmost rank in the hierarchy of legal norms, Congress and Constitutional Convention alike, no less than this Court, must bow to its supremacy. Thereby constitutionalism asserts itself. With the view I entertain of what is allowable, if not indeed required by the Constitution, my conformity does not extend as far as the acceptance of the conclusion reached. The question presented is indeed novel, not being controlled by constitutional prescription, definite and certain. Under the circumstances, with the express recognition in the Constitution of the powers of the Constitutional Convention to propose amendments, I cannot discern any objection to the validity of its action, there being no legal impediment that would call for its nullification. Such an approach all the more commends itself to me considering that what was sought to be done is to refer the matter to the people in whom, according to our Constitution, sovereignty resides. It is in that sense that, with due respect, I find myself unable to join my brethren.

I. It is understandable then why the decisive issue posed could not be resolved by reliance on, implicit in the petition and the answer of intervenors, such concepts as legislative control of the constitutional convention referred to by petitioner on the one hand or, on the other, the theory of conventional sovereignty favored by intervenors. It is gratifying to note that during the oral argument of petitioner and counsel for respondents and intervenors, there apparently was a retreat from such extreme position, all parties, as should be the case, expressly avowing the primacy of the Constitution, the applicable provision of which, as interpreted by this Court, should be controlling on both Congress and the Convention. It cannot be denied though that in at least one American state, that is Pennsylvania, there were decisions announcing the doctrine that the powers to be exercised by a constitutional convention are dependent on a legislative grant, in the absence of any authority conferred directly by the fundamental law. The result is a convention that is subordinate to the lawmaking body. Its field of competence is circumscribed. It has to look to the latter for the delimitation of its permissible scope of activity. It is thus made subordinate to the legislature. Nowhere has such a view been more vigorously expressed than in the Pennsylvania case of Wood's Appeal. [1] Its holding though finds no support under our constitutional provision.

It does not thereby follow that while free from legislative control, a constitutional convention may lay claim to an attribute sovereign in character. The Constitution is quite explicit that it is to the people, and to the people alone, in whom sovereignty resides. [2] Such a prerogative is therefore withheld from a convention. It is an agency entrusted with the responsibility of high import and significance, it is true; it is denied unlimited legal competence though. That is what sovereignty connotes. It has to yield to the superior force of the Constitution. There can then be no basis for the exaggerated pretension that it is an *alter ego* of the people. It is to be admitted that there are some American state decisions, the most notable of which is Sproule v. Fredericks, [3] a Mississippi case, that dates back to 1892, that yield a different conclusion. The doctrine therein announced cannot bind us. Our Constitution makes clear that the power of a constitutional convention is not sovereign. It is appropriately termed constituent, limited as it is to the purpose of drafting a constitution or proposing revision or amendments to one in existence, subject in either case to popular approval.

The view that commends itself for acceptance is that legislature and constitutional convention, alike recognized by the Constitution, are coordinate, there being no superiority of one over the other. Insofar as the constituent power of proposing amendments to the Constitution is concerned, a constitutional convention enjoys a wide sphere of autonomy consistently with the Constitution which can be the only source of valid restriction on its competence. It is true it is to the legislative body that the call to a convention must proceed, but once convened, it cannot in any wise be interfered with, much less controlled by Congress. A contrary conclusion would impair its usefulness for the delicate and paramount task assigned to it. A convention then is to be looked upon as if it were one of the three coordinate departments which under the principle of separation of powers is supreme within its field and has exclusive cognizance of matters properly subject to its jurisdiction. A succinct statement of the appropriate principle that should govern the relationship between a constitutional convention and a legislative body under American law is that found in Orfield's work. Thus: "The earliest view seems to have been that a convention was absolute. The convention was sovereign and subject to no restraint. On the other hand, Jameson, whose views have been most frequently cited in decisions, viewed a convention as a body with strictly limited powers, and subject to the restrictions imposed on it by the legislative call. A third and intermediate view is that urged by Dodd—that a convention, though not sovereign, is a body independent of the legislature; it is bound by the existing constitution, but not by the acts of the legislature, as to the extent of its constituent power. This view has become increasingly prevalent in the state decisions." [4]

2. It is to the Constitution, and to the Constitution alone then, as so vigorously stressed in the opinion of the Court, that any limitation on the power the Constitutional Convention must find its source. I turn to its Article XV. It reads: "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."

Clearly, insofar as amendments, including revision, are concerned, there are two steps, proposal and thereafter ratification. Thus as to the former, two constituent bodies are provided for, the Congress of the Philippines in the mode therein provided, and a constitutional convention that may be called into being. Once assembled, a constitutional

convention, like the Congress of the Philippines, possesses in all its plenitude the constituent power. Inasmuch as Congress may determine what amendments it would have the people ratify and thereafter take all the steps necessary so that the approval or disapproval of the electorate may be obtained, the convention likewise, to my mind, should be deemed possessed of all the necessary authority to assure that whatever amendments it seeks to introduce would be submitted to the people at an election called for that purpose. It would appear to me that to view the convention as being denied a prerogative which is not withheld from Congress as a constituent body would be to place it in an inferior category. Such a proposition I do not find acceptable. Congress and constitutional convention are agencies for submitting proposals under the fundamental law. A power granted to one should not be denied the other. No justification for such a drastic differentiation either in theory or practice exists.

Such a conclusion has for me the added reinforcement that to require ordinary legislation before the convention could be enabled to have its proposals voted on by the people would be to place a power in the legislative and executive branches that could, whether by act or omission, result in the frustration of the amending process. I am the first to admit that such a likelihood is remote, but if such a risk, even if minimal could be avoided, it should be, unless the compelling force of an applicable constitutional provision requires otherwise. Considering that a constitutional convention is not precluded from imposing additional restrictions on the powers of either the executive or legislative branches, or, for that matter, the judiciary, it would appear to be the better policy to interpret Article XV in such a way that would not sanction such restraint on the authority that must be recognized as vested in a constitutional convention. There is nothing in such a view that to my mind would collide with a reasonable interpretation of Article XV. It certainly is one way by which freed from pernicious abstractions, it would be easier to accommodate a constitution to the needs of an unfolding future. That is to facilitate its being responsive to the challenge that time inevitably brings in its wake.

From such an approach then, I am irresistibly led to the conclusion that the challenged resolution was well within the power of the convention. That would be to brush aside the web of unreality spun from a too-restrictive mode of appraising the legitimate scope of its competence. That would be, for me, to give added vigor and life to the conferment of authority vested in it, attended by such grave and awesome responsibility.

3. It becomes pertinent to inquire then whether the last sentence of Article XV providing that such amendment shall be valid when submitted and thereafter approved by the majority of the votes cast by the people at an election is a bar to the proposed submission. It is the conclusion arrived at by my brethren that there is to be only one election and that therefore the petition must be sustained as only when the convention has finished its work should all amendments proposed be submitted for ratification. That is not for me, and I say this with respect, the appropriate interpretation. It is true that the Constitution uses the word "election" in the singular, but that is not decisive. No undue reliance should be accorded rules of grammar; they do not exert a compelling force in constitutional interpretation. Meaning is to be sought not from specific language in the singular but from the mosaic of significance derived from the total context. It could be, if it were not thus, self-defeating. Such a mode of construction does not commend itself. The words used in the Constitution are not inert; they derive vitality from the obvious purposes at which they are aimed. Petitioner's stress on linguistic refinement, while not implausible does not, for me, carry the day.

It was likewise argued by petitioner that the proposed amendment is provisional and

therefore is not such as was contemplated in this article. I do not find such contention convincing. The fact that the Constitutional Convention did seek to consult the wishes of the people by the proposed submission of a tentative amendatory provision is an argument for its validity. It might be said of course that until impressed with finality, an amendment is not to be passed upon by the electorate. There is plausibility in such a view. A literal reading of the Constitution would support it. The spirit that informs it though would not, for me, be satisfied. From its silence I deduce the interference that there is no repugnancy to the fundamental law when the Constitutional Convention ascertains the popular will. In that sense, the Constitution, to follow the phraseology of Thomas Reed Powell, is not silently silent but silently vocal. What I deem the more important consideration is that while a public official, as an agent, has to locate his source of authority in either Constitution or statute, the people, as the principal, can only be limited in the exercise of their sovereign powers by the express terms of the Constitution. A concept to the contrary would to my way of thinking be inconsistent with the fundamental principle that it is in the people, and the people alone, that sovereignty resides.

4. The Constitutional Convention having acted within the scope of its authority, an action to restrain or prohibit respondent Commission on Elections from conducting the plebiscite does not lie. It should not be lost sight of that the Commission on Elections in thus being charged with such a duty does not act in its capacity as the constitutional agency to take charge of all laws relative to the conduct of election. That is a purely executive function vested in it under Article X of the Constitution. [5] It is not precluded from assisting the Constitutional Convention if pursuant to its competence to amend the fundamental law, it seeks, as in this case, to submit a proposal, even if admittedly tentative, to the electorate to ascertain its verdict. At any rate, it may be implied that under the 1971 Constitutional Convention Act, it is not to turn a deaf ear to a summons from the Convention to aid it in the legitimate discharge of its functions. [6]

The aforesaid considerations, such as they are, but which for me have a force that I mind myself unable to overcome, leave me no alternative but to dissent from my brethren, with due acknowledgement of course that from their basic premises, the conclusion arrived at by them cannot be characterized as in any wise bereft of a persuasive quality of a high order.

Footnotes

1. Under Section 36, Rule 138 as amended, no one may appear as *amicus curiae* unless invited or allowed, by the Court.

REYES, J.B.L., ZALDIVAR, CASTRO and MAKASIAR, JJ., concur:

1. L-28196, Nov. 9, 1967, 21 SCRA 774, 816-817.
2. L-28224, Nov. 9, 1967, 21 SCRA 774, 816-817.
3. Per Justice J.B.L. Reyes, concurred by Justices Arsenio P. Dizon, Calixto O. Zaldivar, Fred Ruiz Castro and Eugenio Angeles.
4. 21 SCRA 821.

FERNANDO, J., concurring and dissenting:

1. Wood's Appeal, 75 Pa. 59 (1874) cited in Malcolm and Laurel. Cases in Constitutional Law, pp. 1, 4-5 (1936). It was therein stated: "In a governmental and proper sense, *law* is the highest act of a people's sovereignty while their government and Constitution remain unchanged. It is the supreme will of the people expressed in the forms and by the authority of their Constitution. It is their own appointed mode through which they govern themselves, and by which they bind themselves. So long as their frame of government is unchanged in its grant of all legislative power, these laws are supreme over all subjects unforbidden by the instrument itself. The calling of a convention, and regulating its action by law, is not forbidden in the Constitution. It is a conceded *manner,* through which the people may exercise the rights reserved in the bill of rights. . . . The right of the people to restrain their delegates by law cannot be denied, unless the power to call a convention by law, and the right of self protection be also denied."

2. According to Sec. 1 of Art. II "Sovereignty resides in the people and all government authority emanates from them."

3. 11 So. 472. The following excerpt appears in the opinion: "We have spoken of the constitutional convention as a sovereign body, and that characterization perfectly defines the correct view, in our opinion, of the real nature of that august assembly. It is the highest legislative body known to freemen in a representative government. It is supreme in its sphere. It wields the powers of sovereignty, specially delegated to it, for the purpose and the occasion, by the whole electoral body, for the good of the whole commonwealth. The sole limitation upon its powers is that no change in the form of government shall be done or attempted. The spirit of republicanism must breathe through every part of the framework, but the particular fashioning of the parts of this framework is confided to the wisdom the faithfulness, and the patriotism of this great convocation, representing the people in their sovereignty." The Sproule decision was cited with approval four years later by the Mississippi Supreme Court anew in Dickson v. State, 20 So. 841. A 1908 decision of the Southern State of Oklahoma, State v. Scales, 97 P. 584, admitted the controversial character of the Sproule dictum.

4. Orfield on The Amending of the Federal Constitution, 45-46 (1942).

5. According to Sec. 2 of Article X of the Constitution: "The Commission on Elections shall have exclusive charge of its enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law." Cf. Abcede v. Imperial, 103 Phil. 136 (1958).

6. According to Sec. 14 of the 1971 Constitutional Convention Act (1970): *"Administration and Technical Assistance*. — All government entities, agencies and instrumentalities, including the Senate and House of Representatives, shall place at the disposal of the Convention such personnel premises, and furniture thereof as can, in their judgment be spared without detriment to public service, without cost, refund or additional pay."