ARTICLE VI
THE LEGISLATIVE DEPARTMENT

SECTION 1. THE LEGISLATIVE POWER SHALL BE VESTED IN THE CONGRESS OF THE PHILIPPINES WHICH SHALL CONSIST OF A SENATE AND A HOUSE OF REPRESENTATIVES, EXCEPT TO THE EXTENT RESERVED TO THE PEOPLE BY THE PROVISION ON INITIATIVE AND REFERENDUM.

1. A bicameral body.

Bicameralism is not a stranger to Philippine constitutionalism. The Jones Law provided for a bicameral legislature. The 1935 Constitution initially departed from the bicameral model of the Jones Law and adopted a unicameral body, the National Assembly. By subsequent amendment, however, the National Assembly gave way to a bicameral Congress consisting of a Senate, elected by the nation at large, and a House of Representatives elected by district.

The original 1973 Constitution reverted to unicameralism by providing for a National Assembly. But before the National Assembly could be activated, the Constitution was amended in 1976 principally to provide for a unicameral *interim* Batasang Pambansa which convened in 1978. A subsequent constitutional revision in 1981 created the Batasang Pambansa, still a unicameral body. The Batasang Pambansa was overtaken by the February 1986 Revolution and was abolished by President Aquino's Proclamation No. 3 of March 25,1986.

The supposed advantages of unicameralism were simplicity of organization resulting in economy and efficiency, facility in pinpointing responsibility for legislation, avoidance of duplication, and strengthening of the legislature in relation to the executive. It was also hoped that a unicameral assembly would be a more effective training ground for

national leaders. These were the arguments which persuaded the 197! Constitutional Convention to adopt a unicameral legislative body.'

The debate over unicameralism and bicameralism resurfaced during the deliberations of the 1986 Constitutional Commission. A free-wheeling debate on the subject opened the deliberations on the article on the legislative department and no other matter was taken up until the subject of bicameralism or unicameralism was settled. The arguments for bicameralism were the traditional ones which say that (1) an upper house is a body that looks at problems from the national perspective and thus serves as a check on the parochial tendency of a body elected by districts, (2) bicameralism allows for a more careful study of legislation, and (3) bicameralism is less vulnerable to attempts of the executive to control the legislature. Unicameralism was defended on the traditional grounds of simplicity and economy, and, drawing from the recent experience with "people power," on the ground of greater responsiveness to the needs of the masses because representatives, unlike senators without a fixed constituency, are forced to interact more intensely with their limited and clearly identifiable constituencies. But the end result was a vote of 23-22 in favor of a bicameral Congress.[2]

2. Nature of legislative power.

Legislative power is the authority to make laws and to alter and repeal them. As vested by the Constitution in Congress, it is a derivative and delegated power. "The Constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature in their derivative and subordinate capacity. The one is the work of the Creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move."'

Unlike the Constitution of the United States which contains only a grant of enumerated legislative powers to the Federal Congress, the 1987 Constitution, like the 1973 and 1935 Constitutions, embodies a grant of *plenary* legislative power to the Philippine legislature. Thus, "any power, deemed to be legislative by usage and tradition, is nec-

'Constitutional Convention Session of July 12,1972.
The debates may be found in II RECORD 47-69.
'Vanhome's Lessee v. Dorrance, 2 Dall, 304, 308 (U.S. 1795).

essarily possessed by Congress, unless the organic act has lodged it elsewhere.".[4] And in fact, Section 1 of the 1987 organic law has also given legislative power to the electorate through the exercise of "initiative and referendum" as set down in Section 32.

As corollary to this plenary grant of legislative power, it follows

that the Congress alone can make laws and Congress may not delegate its law making power. This is the principle of non-delegability of legislative power. Its various ramifications will be examined at length later.

Another corollary is that Congress cannot pass irrepealable laws. Judge Cooley explained the logic of this corollary thus:[5]

> To say that the legislature may pass irrepealable laws, is to say that it may alter the very constitution from which it derives its authority; since, in so far as one legislature could bind a subsequent one by its enactments, it could in the same degree reduce the legislative power of its successors; and the process might be repeated, until, one by one, the subject of legislation would be excluded altogether from their control, and the constitutional provision that the legislative power shall be vested in two houses would be to a greater or less degree rendered ineffectual.

3. Separation of powers.

In the presidential system introduced by the 1935 Constitution which allocated the three great powers of government — legislative, executive, and judicial — among three distinct departments, one basic corollary was the principle of separation of powers. This principle operated as an implicit limitation on legislative power as on the two other powers. Under the parliamentary system of the 1973 Constitution the principle remained applicable as between the judiciary on the one hand and the legislature and the executive department on the other; however, as between the legislature and the executive department, cooperation and not separation was the operative principle. When the 1973 Constitution was revised in 1981 to revert to the presidential system, separation of powers as between the legislature and the executive was not restored largely because Amendment 6 of 1976, which gave full

[4]Vera v. Avelino, 77 Phil. 192, 212 (1946).
[5]CONSTITUTIONAL LIMITATIONS *LAW OF THE PHILIPPINES* 242-3 (1962). 246-7, *cited* in ITAKADA & CARREON, *POLITICAL*

legislative power to the President,[6] was retained and thereby gave to the President dominance over the Batasang Pambansa. The 1987 Constitution has restored separation of powers.

In essence, separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary. Each is prevented from invading the domain of the others. But the separation is not total. The system allows for "checks and balances" the net effect of which being that, in general, no one department is able to act without the cooperation of at least one of the other departments. Thus, for instance, legislation needs the final approval of the President; the President cannot act against laws passed by Congress and must obtain the concurrence of Congress to complete certain significant acts; money can be released from the treasury only by authority of Congress. The Supreme Court can declare acts of Congress or of the President unconstitutional.

The purpose of separation of powers and "checks and balances" is to prevent concentration of powers in one department and thereby to avoid tyranny. But the price paid for the insurance against tyranny is the risk of a degree of inefficiency and even the danger of gridlock. As Justice Brandeis put it, "the doctrine of separation of powers was adopted ... not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident tot he distribution of governmental powers among the three departments, to save the people from autocracy."[7]

The danger of tyranny arising from the concentration of powers in one man was realized during the dark days of martial law. But the danger of inefficiency and gridlock can also be intense when the holders of power are driven by self-interest.

4. Limits on legislative power.

Speaking of the powers of the legislative department of governments under the American flag, an early case decided by the Philippine Supreme Court said:[8]

[6]For a discussion of legislative power under Amendment 6 under the 1973 Constitution, *see* BERNAS, *PHILIPPINE CONSTITUTIONAL LAW* (1984) 540-543.
[7]Myers v. United States, 272 U.S. 52,293 (1926).
[8]Government v. Springer, 50 Phil. 259, 309 (1927).

> Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as gov-

ernments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The Constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which it cannot leap.

Although the original 1973 Constitution adopted a parliamentary form of government, it did not adopt the English principle of parliamentary sovereignty under which "Parliament can do everything but make a woman a man, and a man a woman."[9] Neither did the revision of 1981 nor the 1987 Constitution. Thus, legislative power remains a limited power after the manner of the American constitutional system embodied in the 1935 Constitution. It is subject to substantive limitations which circumscribe both the exercise of the power itself and the allowable subjects of legislation. The substantive limitations are chiefly found in the Bill of Rights. And legislative power is subject to procedural limitations prescribing the manner of passing bills and the form they should take.

5. The holders of legislative power: Congress; people through initiative and referendum; President in emergency.

In republican constitutional theory, the original legislative power belongs to the people who, through the Constitution, confer derivative legislative power on the legislature. But the grant of national legislative power to Congress under the 1987 Constitution is not exclusive. Section 1 says that legislative power is vested in Congress "except to the extent reserved to the people by the provision on initiative and referendum." This new provision derives from the lesson drawn from past experience whereby the people have realized that legislative assemblies cannot always be trusted to do what is best for the people. Hence, the people have reserved to themselves the authority to correct legislative mistakes

"DE LOLME, *THE CONSTITUTION OF ENGLAND* 102 (1853), *cited* in SCHAWRTZ, *THE POWERS OF GOVERNMENT* 88 (1963).

or to supplement legislative inadequacies whether on the national level or on the level of local legislation. Section 32 elaborates on this saying: "The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof." The implementing legislation is Republic Act No. 6735 entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefore."[10]

The power of initiative and referendum is thus the power of the people directly to "propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body." Through Section 1, in connection with Section 32, the people have, in addition to their constituent power, reserved for themselves ordinary legislative power through "initiative and referendum." The purpose is to institutionalize "people power" by providing for an instrument which can be used should the legislature show itself indifferent to the needs of the people."

The operationalization of initiative and referendum has been left by the Constitution to Congress. Although in the initial discussion of the subject, the sponsors carefully avoided describing the command to Congress as merely directory,'[2] the command in fact leaves to Congress the determination of the proper time for implementation. A series of recommendations to compel Congress to pass an implementing law, first, "within ninety days after its initial session," and then, "immediately," eventually took the present shape of "as early as possible."'[3] Explaining the meaning of the phrase Commissioner Gascon said: "I would like all the Commissioners to seriously consider this because the whole point here is that we should assure the people that this section providing for initiative and referendum will be [implemented] as soon as possible,

"The first case to come under this implementing law involved local "initiative and referendum" was *Garcia v. Commission on Elections,* 237 SCRA 279 (1994)

and it will not remain simply beautiful words in this Constitution, but will become meaningful to them."[14] The phrase was approved by a vote of 18 to 11.

Other matters of detail were also left to Congress. As Commissioner Davide put it, "We ... believe t h a t . . . the law itself, which will be enacted by the [Congress], will provide for everything in respect to the full implementation of the two concepts."[15] Everything, that is, except those which have been fixed by the Constitution itself. Thus, Section 32 prescribes that the minimum percentage of approval required is "ten *per centum* of the total number of registered voters" throughout the nation and "three *per centum* of the registered voters" of every legislative district throughout the land. Both percentage requirements in proportion to the number of voters found in registration lists should be satisfied.

It should also be noted that, whereas the legislative power of Congress is plenary, the scope of the legislative power which the people may exercise through initiative and referendum is, according to Section 32, subject to exceptions which Congress may impose. But can Congress give to the President veto power over laws passed through initiative and referendum? This question was actually raised on the floor by Commissioner Suarez. Cornmissioner Davide, Chairman of the sponsoring committee, replied, as quoted above, that Congress would "provide for everything in respect to the full implementation of the two concepts." What this means is that the President can have a role in "initiative and referendum" only if he is given a role by law.

The emergency legislative power of the President will be discussed later.

6. Marcos and President Aquino.

The Once and Former Legislative power of President

During the period from 1972 to 1987 Philippine law did recognize legislative power lodged in the presidency. The 1987 Constitution has not disturbed this fact and recognizes legitimate exercise of such power as productive of laws whose effectivity continue until repealed or until found to be inconsistent with the Constitution.

Shortly after the imposition of martial law and the birth of the 1973 Constitution, the Supreme Court, in *Aquino, Jr.* v. *COMELEC*,[16] did recognize legislative power in the President as flowing from his martial law powers and from Article XVII, Section 3(2) of the 1973 Constitution. This was recognized as extraordinary legislative power given to the President to enable him to cope with an extraordinary situation especially at a time when there was no operating legislative body. In 1976, this extraordinary power of the President was brought to clearer relief by Amendment No. 6 which read:

> Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instruction, which shall form part of the law of the land.

After the revision of 1981 was ratified, the continuing effectivity of Amendment 6 was challenged in *Legaspi v. Minister of Finance*,[17] on the arguments, first, that the 1981 revision had vested legislative power solely in the Batasang Pambansa, and, second, that the powers granted by Amendment 6 had not been reconfirmed in Article VII on the presidency, and third, that the powers mentioned in Amendment 6 had been given to a "President (Prime Minister)" which the President after the 1981 revision no longer was.

The argument from the hybrid term "President (Prime Minister)" was easily answered by alluding to the historical circumstance under which the amendment was formulated. The Court, speaking through Justice Barredo, said that the obvious intent of Amendment 6 was to grant legislative power to the person in whom was vested the totality of the executive power. Barredo said:[18]

> As to the parenthetical mention therein of the Prime Minis-

ter, We are of the considered view that it was necessary to do so because under the governmental system then, which was markedly Prime Ministerial, the substantive executive powers were vested

"62 SCRA 275 (January 31,1975); B E R N A S , ***PHILIPPINE CONSTITUTIONAL LAW*** **(1984) 513-515.**

[19] **115 SCRA 418 (July 24, 1982).**

"Id. **at 441-2.Sec. 1 ART. VI - THE LEGISLATIVE DEPARTMENT 683**

in the Prime Minister, the President being merely the symbolical and ceremonial head of state, and the two positions were being held by one and the same person. In other words, the power was contemplated to be conferred upon whomsoever was vested the executive power, and that is as it should be, for, to reiterate, from the very nature of the power itself, the authority to legislate should be allowed, if at all, to be shared only with one in the political department directly deriving power from the vote of the people.

When the *Legaspi* case arose in 1982, the operative legislative body was still the *interim* Batasang Pambansa created in 1976. But the President also possessed legislative power by virtue of Amendment 6 of the 1973 Constitution. (The 1981 revisions, while already operative, had decreed that the elections for the regular Batasang Pambansa would be in 1984.) It was obvious, therefore, that the legislative power given by Amendment 6, as the text itself said, was concurrent with that of the *interim* Batasang Pambansa." Was it also meant to be concurrent with the legislative power of the *regular* Batasang Pambansa?

The Court affirmed that it was. Justice Barredo developed his argument from the intent to create an adequate instrument for coping with emergency situations. He pointed out that the President could cope with emergency either by means of emergency powers delegated by the legislature under Article VIII, Section 15 (1973), or by his power as Commander-in-Chief of the armed forces, principally by his martial law powers, given in Article VII, Section 9 (1973). Both of these, however, had been thought to be inadequate: the first, because it needed to be activated by prior legislative action, and the second, because martial law was generally unwelcome anywhere in the world. Hence, Amendment 6, Barredo argued, was formulated to give to the President the capacity to respond to emergency without having to appeal to the legislature and without having to resort to odious martial rule.[20]

Barredo also added, to satisfy doubting Thomases, that the intent of Amendment 6 was not to set up a dictatorship: "Any tinge or tint of authoritarianism in it is not there for the sake of the ideology of dictatorship or authoritarian itself. Such hue of a one-man authoritarianism it somehow connotes is there only because it is so dictated by paramount

[21] ***Id.*** **at 432.**

[22] **W. at 433-7.684 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 1**

considerations that are needed in order to safeguard the very existence and integrity of the nation and all that it stands for."[21]

Shakespeare might remark that the Justice did protest too much! But it was perhaps understandable that Barredo should, because he spoke as one who was privy to "the events and deliberations" that culminated in the 1976 amendments.[22] For this reason, although what he said about the relation of Amendment 6 to the *regular* Batasang Pambansa was *obiter dictum,* his view on the matter carried great weight. The view also gained added weight from the concurring opinion of Justice Abad Santos who as Secretary of Justice had participated in the drafting of the 1976 amendments.[23]

It is thus clear that the 1973 Constitution provided for two concurrent legislative agencies: the Batasang Pambansa and the President. The legislative power of the Batasan was ordinary, while the legislative power of the President was extraordinary. The extraordinariness of the President's power, however, did not lie solely in that it was a tool for coping with emergency; it also lay in the distinct advantage it gave to the President over the legislature. It not only enabled him to supply for the legislature when the latter, in the judgment of the President, "fail[ed] or [was] unable to act on any matter" that may need immediate action, but it also enabled the President to undo what the legislature might have done not to his satisfaction. Moreover, he could legislate, or repeal or amend old legislation unhampered by any need for debate or three readings or by the other formal limitations that are imposed on the legislative body.

Immediately after the February 1986 revolution, President Cora-

zon C. Aquino assumed revolutionary legislative power and, on March 25,1986, issued Proclamation N o . 3, the Provisional Freedom Constitution, whose Article I, Section 3, abolished the Batasang Pambansa and whose Article II, Section 1, vested legislative power in the President "[u]ntil a legislature is elected and convened under a new Constitution." Section 6 of the 1987 Transitory Provisions in turn said: "The incumbent President [Corazon Aquino] shall continue to exercise legislative

[2] **7d.at433.**

12, 1976).

***See* also his concurring opinion in Sanidad v. COMELEC, 73 SCRA 330,430 (October "115 SCRA at 444.Sec. 1 ART. VI - THE LEGISLATIVE DEPARTMENT 685**

powers until the first Congress is convened." Thus, the only difference between the scope of the legislative powers of President Aquino and that of President Marcos was that, whereas Mr. Marcos exercised the power concurrently first with the *interim* Batasang Pambansa and subsequently with the *regular* Batasang Pambansa, President Aquino exercised it alone. She lost it on July 26, 1987. But she lost it with a bang signing a batch of forty-two legislative acts on the eve of the convening of the First Congress.

7. Non-delegability of legislative power.

In his commentary on the Constitution of the United States, Corwin wrote thus:[2] "

At least three distinct ideas have contributed to the development of the principle that legislative power cannot be delegated. One is the doctrine of separation of powers: Why go to the trouble of separating the three powers of government if they can straightway remerge on their own motion? The second is the concept of due process of law, which precludes the transfer of regulatory functions to private persons. Lastly, there is the maxim of agency *"Delegata potestas non potest delegari"* which John Locke borrowed and formulated as a dogma of political science. ... Chief Justice Taft offered the following explanation of the origin and limitations of this idea as a postulate of constitutional law: "The well-known maxim *'delegata potestas non potest delegari'* applicable to the law of agency in the general common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law. ... The Federal Constitution and State Constitutions of this country divide the governmental power into three branches.... In carrying out that constitutional division ... it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may

" C O R W I N , ***CONSTITUTION OF THE UNITED STATES OF AMERICA,*** **95 (1 9 6 4) .686 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**

Sec. 1

do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination."

In spite of the principle of non-delegability of legislative power, it is common knowledge that numerous statutes have been passed creating administrative agencies and authorizing them to exercise vast regulatory powers. The rules and regulations they issue have the force of law. This phenomenon has been justified by two different theories. The first theory is that a non-legislative body may be authorized to "fill up the details" of a statute. Chief Justice Marshall wrote in 1825: "It will not be contended, that Congress can delegate to the courts, or to any other tribunal, powers which are strictly and exclusively legislative. But Congress may certainly delegate to others powers which the legislature may rightfully exercise itself. ... The line has not been exactly drawn which separate those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions, to fill up the details."[25] The other theory, also enunciated by Marshall, is that Congress may pass contingent legislation, that is, legislation which leaves to another body the business of

ascertaining the facts necessary to bring the law into actual operation.[26]
Under both of the above theories, the function performed by the administrative agency is not law-making but law-execution. In order to ensure that the power delegated by the legislature is not law-making power, the statute making the delegation must
(a) be complete in itself — if must set forth therein the policy to be carried out or implemented by the delegate ... and (b) fix a standard — the limits of which are sufficiently determinate or determinable — to which the delegate must conform in the performance of his functions. ... Indeed, without a statutory declaration of policy, the delegate would in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power not only to make law, but, also, — and this
"Wayman v. Southward, 10 Wheat 1,42 (1825).
"The Brig Aurora, 7 Cr. 382 (1813).Sec. 1 ART. VI - THE LEGISLATIVE DEPARTMENT **687**
is worse — to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress
Provided the above requirements of completeness and sufficiency of standards are satisfied, the regulations passed by an administrative body pursuant to the delegation made by the statute are just as binding as if the regulation had been written in the original statute itself. If, however, these requirements are not satisfied, the regulation will not be allowed to affect private rights.
The rationale behind allowing administrative agencies to promulgate supplementary rules was well expressed in *Philippine International Trading Corporation v. Angeles*.[2]* "[A]s a result of the growing complexity of the modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice."
Compahia General de Tabacos v. *Board of Public Utility*[29] is an instance of early jurisprudence on the subject. Relying on Act No. 2307 the Board of Public Utility Commissioners issued the following order:
"The respondent is heretofore ordered to present annually on or before March first of each year a detailed report of finances and operations of such vessels as are operated by it as a common carrier within the Philippine Islands, in the form and containing the matters indicated in the model of annual report."[30] The Board relied on the following provision of Act N o. 2307:
Section 16. The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:
(b) To furnish annually a detailed report of finances and operations, in such form and containing such matters as the Board may from time to time prescribe.
"Pelaez v. Auditor General, 15 SCRA 569,576-7 (1965).
"CR. No. 108461, October 21, 1996, 263 SCRA 421, 444-45 citing Solid Homes Inc. v Payawal, 177 SCRA 72 (1989).
"34 Phil. 136(1916).
[30]W.at 136-37.688 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 1
Declaring the statute to be an unlawful delegation of legislative power, the Supreme Court said:[3]'
As is apparent at a glance the provision conferring authority on the board is very general. It is also very comprehensive. It calls for a detailed report of the finances and operations of the petitioning steamship company. That, it would seem, covers substantially everything; for there is very little to a steamship company but its finances and operations. It would have been practically the same if the statute had given the Board of Public Utility Commissioners power "to require every public utility to furnish annually a detailed report." Such provision would have been but little broader and little less general than the present provision. It is clear that a statute which authorizes a Board of Public Utility Commissioners to require detailed reports from public utilities, leaving the nature of the report, the contents thereof, the general lines which it shall follow, the principle upon which it shall proceed, indeed, all other

matters whatsoever, to the exclusive discretion of the board, is not expressing its own will or the will of the State with respect to the public utilities to which it refers. Such a provision does not declare, or set out, or indicate what information the ***State*** requires, what is valuable to ***it,*** what ***it*** needs in order to impose correct and just taxation, supervision or control, or the facts which the ***State*** must have in order to deal justly and equitably with such public utilities and to require them to deal justly and equitably with the State. The Legislature seems simply to have authorized the Board of Public Utility Commissioners to require what information ***the*** board wants. It would seem that the Legislature, by the provision in question, delegated to the Board of Public Utility Commissioners all of its powers over a given subject-matter in a manner almost absolute, and without laying down a rule or even making a suggestion by which that power is to be directed, guided or applied.

Similarly, in declaring a price control act unconstitutional in 1919, the Supreme Court analyzed the statute thus:[32]

The question here involves an analysis and construction of Act No. 2868, in so far as it authorizes the Governor-General to fix the price at which rice should be sold. It will be noted that section 1 authorizes the Governor-General, with the consent of the Council

[31] **W.at 138.**

"United States v. Ang Tang Ho, 43 Phil. 1,5-6 (1922).Sec. 1 **ART. VI - THE LEGISLATIVE DEPARTMENT 689**

of State, for any cause resulting in an extraordinary rise in the price of palay, rice or com, to issue and promulgate temporary rules and emergency measures for carrying out the purposes of the Act. By its very terms, the promulgation of temporary rules and emergency measures is left to the discretion of the Governor-General. The legislature does not undertake to specify or define under what conditions or for what reasons the Governor-General shall issue the proclamation, but says that it may be issued "for any cause," and leaves the question as to what is "any cause" to the discretion of the Governor-General. The Act also says: "For any cause, conditions arise resulting in an extraordinary rise in the price of palay, rice or com." The Legislature does not specify or define what is "an extraordinary rise." That is also left to the discretion of the Governor-General. The Act also says that the Governor-General, "with the consent of the Council of State," is authorized to issue and promulgate "temporary rules and emergency measures for carrying out the purposes of this Act." It does not specify or define what is a temporary rule or an emergency measure, or how long such temporary rules or emergency measures shall remain in force and effect, or when they shall take effect. That is to say, the Legislature itself has not in any manner specified or defined any basis for the order, but has left it to the sole judgment and discretion of the Governor-General to say what is or what is not "a cause," and what is or what is not "an extraordinary rise in the price of rice," and as to what is a temporary rule or an emergency measure for the carrying out of the purposes of the Act. Under this state of facts, if the law is valid and the Governor-General issues a proclamation fixing the minimum price at which rice should be sold, any dealer who, with or without notice, sells rice at a higher price, is a criminal. There may not have been cause, and the price may not have been extraordinary, and there may not have been an emergency, but, if the Governor-General found the existence of such facts and issued a proclamation, and rice is sold at any higher price, the seller commits a crime.

In *People* v. *Rosenthal*[37] following the more generous view taken in *Schecter Corporation v. United States,'* the Supreme Court found the broad standard of "public interest" a sufficient guide for the Insular Treasurer in determining the cancellation of a permit to engage in the

"68 Phil. 328 (1939).

"295 U.S. 495 (1935).690 THE 1987 CONSTITUTION

OF THE REPUBLIC OF THE PHILIPPINES

Sec. 1

sale of speculative securities. However, the standard of "public interest" was not viewed standing alone. It was found sufficient only in the context of the purpose of the law, which was to protect the public against speculative schemes having "no more basis than so many feet of blue sky," and in the context of the other requirements which the act itself imposed.[38] The standard therefore could be found in the totality of the

tenor of law. Acknowledging the difficulty of finding the limits within which administrative agencies may be allowed to operate, the Court said that "the safest is to decide each case according to its peculiar environment, having in mind the wholesome legislative purpose intended to be achieved."[36] Thus, in *Araneta* **v.** *Gatmaitan,*[37] the Supreme Court had no difficulty in upholding, in the context of the entire law, the prohibition of the use of trawls in San Miguel Bay pursuant to a statute which authorized the Secretary of Agriculture to impose restrictions "on the use of any fishing net or fishing device for the protection of fish fry or fish eggs."

Since rules and regulations promulgated by administrative agencies pursuant to a valid delegating statute have the force of law, may their violation be punished as a penal offense? They may. Jurisprudence, however, has promulgated three rules regarding the matter. For an administrative regulation to have the force of penal law it is necessary (1) that such violation be made a crime by the delegating statute itself,[38] (2) that the penalty be provided by the statute itself,[39] and (3) that the regulation be published.[40] On this principle and on due process grounds, a law which prescribed a penalty "in the discretion of the court" was declared invalid. "It is not for the courts to fix the term of imprisonment where no points of reference have been provided by the legislature. What valid delegation presupposes and sanctions is an exercise of discretion to fix the length of service which must be served within specific or designated limits provided by law, the absence of

[36] **68 Phil. 341-43.**
[37] ***M. at 343.**
[38] **"101 Phil. 328 (1957).**
[39] **"United States v. Grimaud, 220 U.S. 506 (1911).**
[40] **"Steuart & Bro. v. Bowles, 322 U.S. 398,404 (1944).** ***See also*** **United States v. Banias, 11 Phil. 327 (1908); United States v. Panlilio, 28 Phil. 608 (1914).**

which designated limits will constitute such exercise as undue delegation, if not an outright intrusion or assumption, of legislative power."[41]

8. Developments in jurisprudence.

On the eve of the Constitutional Convention of 1971, the doctrine on non-delegability was already well established and the trend was towards a liberal recognition of the phenomenon of "subordinate legislation." As the Court summed it up in *Edu* v. *Ericta:"*[2]

What cannot be delegated is the authority under the Constitution to make laws and to alter and repeal them; the test is the completeness of the statute in all its term and provisions when it leaves the hands of the legislature. To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. The legislature does not abdicate its function when it describes what job must be done, who is to do it, and what is the scope of his authority. For a complex economy, that may indeed be the only way in which legislative process can go forward.

To avoid the taint Of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. The standard may be either express or implied ... from the policy and purpose of the act considered as a whole.

The doctrine did not change under the 1973 Constitution. Thus, a regulation passed by the Secretary of Agriculture penalizing electro-fishing was declared unconstitutional since electro-fishing was not one of the forms of fishing punishable under the Fisheries Act under which the Secretary purported to act.[43] In fact, a later Presidential Decree added electro-fishing to the list of punishable forms of fishing, acknowledging thereby that it was not punishable under prior existing law. Moreover, the doctrine on non-delegation was applied to legislation by the President. Thus, it was applied in *Agustin v. Edu*[44] which upheld a traffic regulation requiring the use of "early warning devices" and in

[41] **" People v. Dacuycuy, 173 S C R A 90 (1989).**
[42] **35 S C R A 4 8 1 , 4 9 6 - 7 (October 24,1970).**
[43] **" People v. Maceren, 79 S C R A 4 5 0 (October 18,1977).**
[44] **"88 S C R A 195 (February 2,1979).**

Free Telephone Workers Union v. *Minister of Labor and Employment* which upheld the power given to the Minister of Labor to certify a labor dispute to the National Labor Relations Commission for compulsory arbitration. Of interest in *Free Telephone Workers* is a statement of Jus-

tice Fernando which augured even greater liberalization of the rules on delegation under the 1973 Constitution. Fernando said that the semi-parliamentary features of the 1973 Constitution would lead to "an appreciable measure of concord and harmony between the policy making branches of the government, executive and legislative" and that while "conceptually, there still exists a distinction between enactment of legislation and its execution, between formulation and implementation, the fundamental principle of separation of powers of which non-delegation is a logical corollary becomes even more flexible and malleable."[46] In the context of the Marcos regime, that was putting it very mildly!

Jurisprudence under the 1987 Constitution has not departed from earlier established doctrine. In *Eastern Shipping Lines* v. *POEA,*[47] the standard "fair and equitable employment practices" was found sufficient basis for a regulation prescribing a model contract for overseas workers. Likewise, the power of expert commissions to fix wages under strict standards set by the legislature was recognized in *Employers Confederation* **v.** *National Wages and Productivity Commission.** as necessary in a world of specialized activities.

Decisions have emphasized that the standard need not be explicit or formulated in precise declaratory language. It can be drawn from the declared policy of the law and from the totality of the delegating statute. Thus, as in *Rosenthal,* in *Tablarin* v. *Gutierrez*'* the authority of the Board of Medical Education to set rules for the closure of medical schools was drawn from the general standard of "standardization and regulation of medical education" taken together with other provisions of the delegating statute. Similarly, in *Osmefia* v. *Orbos,*[50] the authority of the Energy Regulatory Board to fix the domestic prices of petroleum products was found to be sufficiently specified "by the

[46]108 SCRA 757 (October 30, 1981).
"/tf. at 771.
[47]166 SCRA 533,545 (1988).
^ O I SCRA 759,766 (1991).
.*152 SCRA 730 (1987).
[50]220 SCRA 703,711-713 (1993).Sec. 1 ART. VI - THE LEGISLATIVE DEPARTMENT 693

general policy of the law to protect local consumers by stabilizing and subsidizing domestic pump rates," by the authority given to impose additional amounts "to augment the resources of the [Oil Price Stabilization] Fund." More liberally still, the standard may be embodied in other statutes on the same subject as that of the challenged law.[51]

The firm rule, moreover, remains that administrative agencies may not issue regulations that contravene law.[52] Thus, a regulation passed by the Metro Manila Authority authorizing the confiscation of license plates and driver's license for certain traffic violations was declared invalid for being contrary to Presidential Decree No. 1605.[53] In *Tatad* v. *Secretary of the Department of Energy,*[54] the Court invalidated Executive Order No. 392 because, in effecting the full deregulation of the oil industry, President Ramos added a standard which did not appear in the delegating law, R.A. N o . 8180. The standards set by the law for oil deregulation were (1) the time when the price of crude oil and petroleum products in the world market were declining; and (2) the time when the exchange rate of the peso in relation to the US dollar was stable. E.O. No. 392 considered the depletion of the OPSF fund as a third factor for ordering the early implementation of full oil deregulation. The Court said: "We therefore hold that the Executive department failed to follow faithfully the standards set by R.A. No. 8180 when it considered the extraneous factor of depletion of the OPSF fund." Such consideration amounts to a rewriting of the standards set forth in R.A. No. 8180. "On the basis of the text of E.O. N o . 392, it is impossible to determine the weight given by the Executive department to the depletion of the OPSF fund.... In light of this uncertainty, we rule that the early deregulation under E.O. No. 392 constitutes a misapplication of R.A. No. 8180."

The Supreme Court has continued to apply the same principles that have been developed in the past. Thus the standby authority given to the President to increase the value added tax rate in the VAT Law, R.A. No. 9337, was upheld as an example of *contingent legislation*

"Chiongbian v. Orbos, GJA. No. 96754, June 22,1995.
"Solicitor General v. Metropolitan Manila Authority, 204 SCRA 837 (1991); Cebu Oxygen v. Secretary Drilon, 176 SCRA 24 (1989).
"Solicitor General v. Metropolitan Manila Authority, GJi. No. 102782, December 11, 1991.
***»GR.* Nos. 124360 and 127867, November 5,1997.694 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**
Sec. 1

where the effectivity of the law is made to depend on the verification by the executive of the existence of certain conditions."

In *Gerochi v. DENR** the power delegated to the Energy Regulator Board to fix and impose a universal charge on electricity end-users was challenged as an undue delegation of the power to tax. The Court, however, said that, since the purpose of the law was not revenue generation but energy regulation, the power involved was more police power than the power to tax. Moreover the Court added that the power to tax could be used for regulation. As to the validity of the delegation to an executive agency, the Court was satisfied that the delegating law was complete in itself and the amount to be charged was made certain by the parameters set by the law itself.

R.A. No. 9335, the Attrition Act of 1995, authorized the BLR and BOC to give awards to those who surpass the BLR targets and to impose sanctions on those who fall short. The awards were to be taken from the excess over target as set up by a Board. The validity of the law was challenged on the ground that the delegation to the President of the power to set targets was invalid.

However, the law was found to be complete and to have standards for the President to follow. Revenue targets were based on the original estimated revenue collection expected respectively of the BLR and the BOC for a given fiscal year as approved by the D B C C and stated in the BESF submitted by the President to Congress. Thus, the determination of revenue targets did not rest solely on the President as it also underwent scrutiny by the D B C C . On the other hand, Section 7 specified the limits of the Board's authority and identified the conditions under which officials and employees whose revenue collection fell short of the target by at least 7.5% may be removed from the service.[57]

The Attrition Act was also challenged on the argument that the oversight function of Congress was unconstitutional. But in this case, the oversight had already been done and was *functus officio.* Hence, there was no need to pass on validity. However, for the future, the Court set down the following guidelines to maintain separation of powers:

"Abakada Guru Party List Officers v. Executive Secretary, G.R. No. 168056, September **1, 2005. Reconsidered October 18,2005.**

"G.R. No. 159796, July 17, 2007

"Abakada Guru v. Purisima.G.R. No. 166715, August 14,2008.Sec. 1 ART. VI - THE LEGISLATIVE DEPARTMENT 695

Any post-enactment congressional measure should be limited to scrutiny and investigation. In particular, congressional oversight must be confined to the following:

(1) Scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and

(2) Investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

Any action or step beyond these will undermine the separation of powers guaranteed by the Constitution. Legislative vetoes fall in this class.[58]

9. Exceptions to non-delegability.

One recognized exception to the rule on non-delegability of legislative power is that local governments may be allowed to legislate on purely local matters.[59] This is an exception which according to *Rubi* v. *Provincial Board*[60] is "sanctioned by immemorial practice." Since what is given to local legislative bodies is true legislative power and not just the power to promulgate rules and regulations, it is not necessary that the delegating statute follow the rules for valid delegation applicable to the empowerment of administrative agencies. It is sufficient that the statute indicate the subject matter over which the local law-making agency may legislate.

It should be noted, moreover, that on the local level the principle of separation of powers does not apply strictly between the executive and the law-making body. This was true under the 1935 and 1973 Constitutions and this remains true under the 1987 Constitution. Hence, a local law-making agency may be given executive functions. When what

"AbakadaGuru v. Purisima, G.R. No. 166715,August 14,2008.

"Local governments under the 1973 possessed very limited legislative power derived directly from the Constitution. Under the 1987 Constitution, local legislative power has been expanded. This will be studied under Article X. Prior to the 1973 Constitution, however, legislative power of local governments was only delegated power coming from Congress.

is given to a local legislative body is executive power, the rules applicable to the empowerment of administrative agencies also becomes applicable to the local law-making body. Thus, in *People* v. *Vera,"* the Supreme Court declared unconstitutional a statute which left the activation of a probation system to the discretion of the Provincial Board. Among the defects which the Court found in the statute was invalid delegation of legislative power. The Court ruled that the principles for delegation to administrative agencies had not been satisfied. But this, only because the Court said that for the purpose of the statute involved "the provincial boards may be regarded as administrative bodies."[62]

The Constitution itself, of course, may create other exceptions to the rule on non-delegability. Thus, for instance, Article VI, Section 23(2), authorizes Congress, in times of war and other national emergency, to give to the President "powers necessary and proper to carry out a declared national policy," and again, Section 28(2) authorizes Congress to delegate the power to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties and imposts.

S E C 2. THE SENATE SHALL BE COMPOSED OF TWENTY-FOUR SENATORS WHO SHALL BE ELECTED AT LARGE BY THE QUALIFIED VOTERS OF THE PHILIPPINES, AS MAY BE PROVIDED BY LAW.

1. Composition and election of Senate.

Following the 1935 Constitution, the 1987 Constitution has pegged the total membership of the Senate at twenty-four. What is the basis for fixing the number at twenty-four? In response to this question, Commissioner Davide, Chairman of the Committee on the Legislature, answered that the number was decided upon disregarding the factor of an the ever growing population. Davide said that the Committee looked rather on the slim vote favoring bicameralism, in spite of a committee report embodying unicameralism, as a signal of the desire to return to the small Senate of the 1935 Constitution. He recalled that the proponents of bicameralism had argued that bicameralism could achieve quality legislation and therefore the Committee thought it wise for this purpose to provide a small Senate. Davide in fact suggested that the

"65 Phil. 56 (1937).
"Wat 116.Sec. 3 ART. VI - THE LEGISLATIVE DEPARTMENT 697

smaller number suggested superior quality[63] and that a number higher than twenty-four would tend to dilute the quality of the Senate.[64]

But can the number be increased by ordinary legislation? On the basis of Davide's argument justifying the small number and on the basis of the grammatical position of the phrase "as may be provided by law" in Section 2, it can be said that the number can be changed only by constitutional amendment and that the phrase "as may be provided by law" has reference to the mechanics for electing the Senators at large and not to the number of Senators.

The Senators are elected at large, that is, senatorial candidates submit themselves to a vote of the entire national electorate. This manner of electing Senators can only be changed by constitutional amendment. In fact, an amendment proposed by Commissioner Lerum that four out of the twenty-four should be elected as may be provided by law "to represent the sectors" was defeated. As Commissioner Rodrigo pointed out, the reason for requiring that Senators be elected at large was the need to satisfy the desire that the Senate look on problems from the national and not parochial perspective.[65] Similarly, a proposal of Commissioner Gascon to have the Senators elected "through a party-list system" was defeated.[66]

SEC. 3. No **PERSON SHALL BE A SENATOR UNLESS HE IS A NATURAL-BORN CITIZEN OF THE PHILIPPINES, AND, ON THE DAY OF THE ELECTION, IS AT LEAST THIRTY-FIVE YEARS OF AGE, ABLE TO READ AND WRITE, A REGISTERED VOTER, AND A RESIDENT OF THE PHILIPPINES FOR NOT LESS THAN TWO YEARS IMMEDIATELY PRECEDING THE DAY OF THE ELECTION.**

1. Qualification of Senators.

Section 3 says: "No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election." Deliberations on this provision re-

"11 RECORD 146.
"W. at 594.
[65]W. at 594-6.
<*Id.* at 596-7.698 THE 1987 CONSTITUTION

veal (1) that the residence requirement is satisfied if one is domiciled in the Philippines even if not physically present in the Philippines during the two-year period, and (2) that the age qualification must be possessed on the day the votes are cast as fixed by law and not on the day of proclamation.[67] Moreover, a proposal of Commissioner Tingson to raise the age requirement to forty was withdrawn after some young and not so young Commissioners ganged up on him.[68]

SEC. 4. THE TERM OF OFFICE OF THE SENATORS SHALL BE SIX YEARS AND SHALL COMMENCE, UNLESS OTHERWISE PROVIDED BY LAW, AT NOON ON THE THIRTIETH DAY OF JUNE NEXT FOLLOWING THEIR ELECTION.

No **SENATOR SHALL SERVE FOR MORE THAN TWO CONSECUTIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF HIS SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.**

1 . **The term of Senators; staggering of terms.**

The term of office of Senators is six years and, unless otherwise provided by law, commences at noon on the thirtieth day of June next following their election. The six-year term follows the model of the Senate under the 1935 Constitution. The innovation introduced by the 1987 Constitution is the constraint that no Senator shall serve for "more than two consecutive terms."

The six-year term was arrived at after a lengthy discussion which involved a joint consideration of the terms of the President, Vice-President, Senators, and members of the House of Representatives.[69] The term of the Senators came out as part of a total package which could facilitate synchronization of elections — six years for the President, Vice-President, and Senators, and three years for members of the House.

On the possibility of re-election of Senators, the Constitutional Commission voted to choose from among four alternatives: (1) a six-year term with an absolute bar against re-election, (2) a six-year term

[67] ***Id.*** **at 87.**
[68] ***Id.*** **at 153-156.**
[69] **W. at 207-235.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 699**

with one inirnediate re-election, (3) a six-year term without immediate re-election, and (4) a six-year term without limit on the possible number of re-elections. Twenty-two voted for the second alternative which is now the second paragraph of Section 4. Moreover, "[v]oluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected."

Does the limitation on number of elections mean that a Senator who has served two consecutive terms must wait for six years before he can run again for the Senate? The answer given to this question was that a Senator could run again three years after the expiration of his second term.[70]

Although Section 4 provides for a six-year term, those elected in the May 1987 elections had a term of five years because Section 2 of the Transitory Provisions said: "The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 3 0 , 1 9 9 2 . " Moreover, from 1992 the staggering of the terms started. Section 2 of the Transitory Provisions said: "Of the Senators elected in the election in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years." Thereafter, senatorial elections take place every three years and all are elected for a six-year term.

SEC. 5. **(1) THE HOUSE OF REPRESENTATIVES SHALL BE COMPOSED OF NOT MORE THAN TWO HUNDRED AND FIFTY MEMBERS, UNLESS OTHERWISE FIXED BY LAW, WHO SHALL BE ELECTED FROM LEGISLATIVE DISTRICTS APPORTIONED AMONG THE PROVINCES, CITIES, AND THE METROPOLITAN MANILA AREA IN ACCORDANCE WITH THE NUMBER OF THEIR RESPECTIVE INHABITANTS, AND ON THE BASIS OF A UNIFORM AND PROGRESSIVE RATIO, AND THOSE WHO, AS PROVIDED BY LAW, SHALL BE ELECTED THROUGH A PARTY-LIST SYSTEM OF REGISTERED NATIONAL, REGIONAL, AND SECTORAL PARTIES OR ORGANIZATIONS.**

(2) THE PARTY-LIST REPRESENTATIVES SHALL CONSTITUTE TWENTY *PER CENTUM* **OF THE TOTAL NUMBER OF REPRESENTATIVES INCLUDING THOSE UNDER THE PARTY LIST. FOR THREE CONSECUTIVE TERMS AFTER THE RATIFICATION OF THIS CONSTITUTION, ONE-HALF**

[70] ***Id.*** **at 590.**700 **THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 5**

OF THE SEATS ALLOCATED TO PARTY LIST REPRESENTATIVES SHALL BE FILLED, AS PROVIDED BY LAW, BY SELECTION OR ELECTION FROM THE LABOR, PEASANT, URBAN POOR, INDIGENOUS CULTURAL COMMUNITIES, WOMEN, YOUTH, AND SUCH OTHER SECTORS AS MAY BE PROVIDED BY LAW, EXCEPT THE RELIGIOUS SECTOR.
(3) EACH LEGISLATIVE DISTRICT SHALL COMPRISE, AS FAR AS PRACTICABLE, CONTIGUOUS, COMPACT AND ADJACENT TERRITORY. EACH CITY WITH A POPULATION OF AT LEAST TWO HUNDRED FIFTY THOUSAND, OR EACH PROVINCE, SHALL HAVE AT LEAST ONE REPRESENTATIVE.
(4) WITHIN THREE YEARS FOLLOWING THE RETURN OF EVERY CENSUS, THE CONGRESS SHALL MAKE A REAPPORTIONMENT OF LEGISLATIVE DISTRICTS BASED ON THE STANDARDS PROVIDED IN THIS SECTION.

1. Composition of the House of Representatives.

Section 5(1) fixes the membership of the House of Representatives at two hundred and fifty. The initial total membership was arrived at taking into consideration a national population of 55 million." However, the total membership of the House may be raised from time to time by statute because Section 1 says that the total is 250 "unless otherwise fixed by law." This can be done through reapportionment resulting in the creation of new districts or through the creation of new provinces, since each province is entitled to at least on district, or through the creation of cities meriting one legislative district under Section 5(3). Reapportionment of legislative districts, according to Section 5(4), must be done by Congress within three years following the return of every census in order to ensure that proportional representation is preserved. When one of the municipalities of a congressional district is converted into a city large enough to entitle it to one legislative district, the incidental effect is the splitting of the district into two. The incidental arising of a new district in this manner need not be preceded by a census. Moreover, this incidental effect is deemed implicitly contained in the title announcing the creation of the new city thus satisfying the requirement that the content of the bill be announced in the title.[72] If,

[71] **W. at 44.**

[7] **Tobias v. Abalos, 239 SCRA 106 (1994); Mariano, Jr. v. Commission on Elections, G J*. No. 118627, March 7, 1995.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 701**

however, as a result of the increase of the number of legislative districts, either because of the creation of a new province or of a new city, an imbalance results in the remaining legislative districts of the mother province, the Commission on Elections has no authority to correct the imbalance by the transfer of municipalities from one district to another. Correction of the imbalance must await the enactment of a reapportionment law.[73]

Section 5(1) provides for two kinds of representatives: *district* representatives elected by districts and *party* representatives elected through the party-list system. Section 5(2) adds a third kind: *sectoral* representatives. However, sectoral representation in the house of Representatives will last only for "three consecutive terms after the ratification of this Constitution." After the lapse of such period, there will remain only *district* and *party* representatives.

2. District representatives.

Section 5(1) prescribes that district representatives "shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio." The underlying principle behind this rule for apportionment is the concept of equality of representation which is a basic principle of republicanism.[74] One man's vote should carry as much weight as the vote of every other man. In a representative system, this equality is ensured by requiring that the representatives represent as much as possible an equal number of constituents. This can be achieved either by making representatives represent districts of equal sizes in terms of inhabitants or by requiring that larger representative districts should be entitled to more representatives. The 1973 Constitution followed the second method since the country was then divided not into representative districts of approximately equal sizes but into regions of unequal sizes. Section 5(1) reverts to the rule under the 1935 Constitution according to which the country was divided into representative districts of more or less equal sizes represented by one representative.

"Montejo v. Commission on Elections, G.R. No. 118702, March 16,1995.

[74] **Macias v. COMELEC, 3 SCRA 1,7-8 (1961).702 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**
Sec. 5

For the purpose of the first elections under the 1987 Constitution, an Ordinance appended to the Constitution divided the country into 200 representative districts.[75] On the basis of a 55 million population, the result achieved was roughly one representative for more or less every 250,000. Since 1986, however, the number of representative districts has increased beyond the original fifty.

3. Apportionment.

The rules for dividing provinces and cities and the Metropolitan Manila area as well as other metropolitan areas which might be created in the future are set down in Section 5. The first basic rule, found in Section 5(1), is that the legislative districts shall be "apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio."

The second rule, stated in Section 5(3), is that "Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory." This rule is a prohibition of "gerrymandering." Gerrymandering means the creation of representative districts out of separate portions of territory in order to favor a candidate. This was also prohibited under the 1935 Constitution.[76] It should be noted, however, that the requirement that representative districts should consist of "contiguous, compact and adjacent territory" is qualified by the phrase "as far as practicable." In *Felwa* v. *Salas,*[77] construing an identical provision in the 1935 Constitution, there was a suggestion that ethnic or tribal considerations might justify departure from the rule.

A third rule, also found in Section 5(3) is that "Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative."[78] It should be noted that for a city to merit one representative it should have a population of at least two hundred fifty thousand.[79] If a city is smaller than the minimum size required, it will simply be represented as a part of one of the districts within the province. A province, however, is entitled to one representative no matter what its population size. This, in effect, is an exception to the rule on proportional representation because a number of provinces, such as Batanes, have a population size much smaller than that required for a district or for a city.[80]

The fourth rule, found in Section 5(4) says: "Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section." This provision is intended to allow for correction of imbalances in representation due to rise and movements of population. The frequency of reapportionment will depend partly on the frequency of censuses. But what happens if Congress does not do what is prescribed by Section 5(4)?

Contrary to early American jurisprudence, it is now established in this jurisdiction that observance of the constitutional mandate regarding apportionment of representative districts is a justiciable question cognizable by the courts. Decisions in this tenor were promulgated by the Court under the 1935 Constitution.[81] Likewise *Tobias* v. *Abalos**[2] decided a case involving the creation of a new representative district under the 1987 Constitution. The case involved the division of San Juan and Mandaluyong into two representative districts. Originally the two had formed one representative district. But with the elevation of Mandaluyong from municipality into a highly urbanized city, both Mandaluyong and San Juan were recognized by R.A. No. 7675 as distinct representative districts. This was challenged on the ground that R.A. No. 7675 did not mention any census indicating that San Juan and Mandaluyong had the minimal requirement of 250,000 inhabitants needed to constitute a district. Neither did the challengers, however, give any evidence that the respective populations of each of the two political units were less

"An amendment to allow cities entitled to more than one representative to elect their representatives at large was rejected. II RECORD 176,593-4.
"There is a bit of discussion on this, *id.* at 136-138.
"Marias v. COMELEC, *supra,* note 55; Felwa v. Salas, *supra:* Gonzales v. COMELEC, 21 SCRA 774 (1967).
"239 SCRA 106 (1994); Mariano, Jr. v. Commission on Elections, GJt. No. 118627,
"Rather than pass on the task of apportioning the nation to the President or to COMELEC for the purpose of the first elections under this Constitution, the Commission decided to do the apportioning. V RECORD 669-700.
"Article VI, Section 2 (1935).
"18 SCRA 606,615 (1966).
The original minimum approved was a population of two hundred thousand but this was later raised to two hundred fifty thousand. V RECORD 669.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 703

than the number required. Hence the Court presumed that Congress had made due consideration of the minimum requirement.[83]
However, although it is the constitutional duty of Congress to ensure proportional representation, it is submitted that there is no power which can compel Congress to make a reapportionment even when, through the growth and movement of populations, the existing apportionment has in fact become inequitable. In fact, Philippine jurisprudence suggests that what the Constitution abhors is inequality in apportionment if the inequality is created by law and not when the inequality arises from the growth and movement of the population. This much may be gathered from *Gonzales v. COMELEC"* which upheld the validity of existing representative districts in spite of admitted gross disproportion in population distribution. However, the result in the *Gonzales* decision was anchored on a 1935 provision which said: "Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts." The provision legalized whatever inequity there may have been in the existing apportionment. No similar provision is found in the present Constitution. A factual inequitable situation, therefore, would already be an unconstitutional situation. But if Congress refuses to remedy the situation by a new apportionment, as mandated by Section 5(4), can any power compel Congress to make the reapportionment, or can anybody else do the reapportioning? Can the Courts or the Commission on Elections do it? These are questions which Philippine jurisprudence has not yet answered.[85]
Moreover, *Sema v. COMELEC*[*6] ruled that new legislative districts may be created only by law. Section 19, Article VI of R.A. No. 9054, insofar as it granted to the A R M M Regional Assembly the power to create provinces and cities, which could in effect result in the creation of legislative districts, was invalidated. "Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts, a power only Congress can

***Id. at* 111.**
Id.
[85]**On this matter, *see id.,* Reynolds v. Sims, 377 U.S. 533 (1964); Wesberry v. Sandere, 376 U.S. 1 (1964). '**
"•Sema v. COMELEC, G.R. No. 177597, July 16,2008.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 705

exercise under Section 5, Article VI of the Constitution and Section **3** of the Ordinance appended to the Constitution. The A R M M Regional Assembly cannot create a province without a legislative district because the Constitution mandates that every province shall have a legislative district."
It should also be noted that the creation of a representative district is not the same as the creation of a new political subdivision. In *Bagabuyo* v. *Commission on Elections,"* the constitutionality of the division of Cagayan de Oro City into two legislative districts was challenged on the ground that no plebiscite had been held to approve it. The petitioner was under the erroneous impression that the creation of a legislative district necessarily involves the creation of a new political subdivision for which a plebiscite is required by Article X, Section 10. But what happened here was a reapportionment under Article VI, Section 5 which does not require a plebiscite. No new political subdivision was created because Cagayan de Oro remained as one city.

4. Sectoral representation and party-list representation.

There are two related but distinct concepts found in Section **5:** sectoral representation and party-list or proportional representation. Both are important for a full understanding of the provision.
Sectoral representation, was explained by Commissioner Villacorta thus:[88]

The idea of giving meaningful representation, particularly to the farmers and the workers, would be our Commission's humble gesture of extending protection to the interests of these groups which are not adequately attended to in normal legislative deliberations. Sectoral representation is a necessity, especially in these times when the people are giving the democratic process another chance, if not its last chance. Providing for mechanisms which would enhance the chances of marginalized sectors in electing their Representatives to the National Assembly will keep their

hopes alive in the principle of peaceful change. This imperative becomes more urgent when this Commission recently adopted a bicameral system of legislature. We have heard apprehensions that
"CR. No. 176970, December 8,2008.
"»«. at 84-85,146-147.706 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES
Sec. 5
the Upper House might be monopolized by the moneyed sectors and might protect vested property interests.
Party-list representation was elucidated by Commissioner Monsod, its main sponsor:[89]
I would like to make a distinction from the beginning that the proposal for the party list system is not synonymous with that of the sectoral representation. Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the sectors. In making the proposal on the party list system, we were made aware of the problems precisely cited by Commissioner Bacani of which sectors will have reserved seats. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go?
Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao. One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.
Much of the discussion on the party-list system revolved around the question of how sectors, that is, especially disadvantaged sectors of society, should be represented. One view was that sectoral parties or organizations should be assured reserved seats in the House; another
***Id.* at 85-86.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 707**
view was that they should compete in the party-list system just like any other party or organization.[90] The desire to give them reserved seats was born of the recognition of the inability of the disadvantaged sectors to compete in the political process.[91] In the end the Commission approved a compromise: "For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives" will be reserved for sectoral representatives who will be chosen "as provided by law."
This compromise recognizes the handicap under which disadvantaged sectors operate but at the same time it is meant to motivate them to strengthen their organizations so that they will eventually be able to compete in the regular party-list system three consecutive terms after the operation of the party-list system commences.[92] In the concrete this would mean that by the elections of 1998 the sectors would have to compete in the party-list system of the electoral process.[93]
The original list of sectors to be represented included only labor, peasant, urban poor, and youth sectors. There was a recognition, however, that these sectors could further be subdivided by law into sub-sectors.[94] Eventually, two other sectors — indigenous cultural communities and women — were added,[95] and also "such other sectors as may be provided by law."[96] And Commissioner Rigos added: "except the religious sector."[97] But, upon question by Commissioner Villacorta, Rigos explained that a member of the religious sector may become a sectoral representative but not as representing the religious sector.[98]
Originally, the manner of choosing the sectoral representatives during the transition period was to be left to ordinary legislation.[99] Eventually, however, the Constitutional Commission added a supple-

mental alternative which became Article XVIII, Section 7: "Until a law is passed, the President may fill by appointment from a list of nominees
M. at 252-259; 560-583.
***Id.* at 561-567.**
***Id.* at 567-570,577-582.**
***Id.* at 585-586.**
***Id.* 573.**
***Id.* 574**
W. at 587.
Id.
M. at 589.
Article VI, Section 5(2).708 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 5
by the respective sectors the seats reserved for sectoral representation in paragraph (2), Section 5 of Article VI of this Constitution."[100] Should the President appoint such sectoral representatives, their term would be that found in the Constitution. A subsequent law passed by Congress would not oust those appointed by the President.[101]
It should be noted, however, that the text says "may fill by appointment." The use of the word "may," which is permissive, was deliberate in order to give to the President ample leeway.[102] However, the President was not free to choose any one he pleases. He or she must choose from "a list of nominees by the respective sectors;" but if the President did not like the list of nominees, she could ask for another list or may decide not to appoint anyone.[103]
Must the sectoral representative appointed by the President be confirmed by the Commission on Appointments? This was not discussed in the Constitutional Commission because sectoral representation was approved before the commission had done its work on the Commission on Appointments. When later the matter went to the Supreme Court, the Court ruled in *Quintos-Deles* v. *Commission on Appointments',** that confirmation was needed. The Court reasoned that, since the sectoral representative would be, under Article XVIII. Section 7, appointed by the President, he came under Article VII, Section 16 which includes among those needing confirmation "other officers whose appointments are vested in him in this Constitution."
In sum, therefore, Section 5 provides two regimes: a temporary regime of sectoral representation — for three consecutive terms — and a permanent party-list or proportional representation regime. The temporary sectoral representation regime was an answer to the recognized disadvantage of the marginalized sectors. At the same time it was a signal to these sectors that within a period of three congressional terms they should prepare to compete with other organizations and traditional political parties in a system of proportional representation that would treat parties and organization on the same level.
V RECORD 328-338.
***Id.* 332.**
***Id.* at 333-336.**
W.338.
177 SCRA 259(1989).Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 709
Those qualified to participate in the party-list system are "registered national, regional, and sectoral parties or organizations" in the manner explained by Commissioner Monsod. The party-list representatives will constitute "twenty *per centum* of the total number of representatives including those under the party list." Thus, under a total membership of 250, a fully operative party-list system would mean 200 district representatives and 50 party-list representatives.'[105]
Although the Constitution does not set down the mechanics for the operation of the system but leaves these to ordinary legislation, the 1986 Constitutional Commission had a clear understanding of the rough outlines of how the system should operate.'[106] Parties or organizations desiring to participate in the party-list system register themselves together with a list of the party's or organization's list of nominees for party-list representatives. The maximum number will be prescribed by law and the nominees will be arranged by the party or organization according to an order of priorities. In every election for the House of Representatives, each voter casts two votes: one for the district representative of his or her choice and another for the party or organization of his or her choice. The votes cast for the parties and organizations are totaled nationwide. The number of party-list seats a party or organization will get will depend on the number of votes it receives in proportion to the total number of votes cast nationwide.[107]

5. Jurisprudence on the party-list system.

The current party-list law is Republic Act No. 7941. When it was first implemented in 1998, the major political parties, according to the terms of the statute, were excluded from participation.

An early case on the party-list system under R.A. No. 7941 settled two questions. First, how many votes must an organization receive in order to qualify for a seat in the House? R.A. No. 7941 required parties, organizations and coalitions participating in the system to obtain at least two percent of the total votes cast for the party-list system in order to be entitled to a party-list seat. Those garnering more than this per-

"»V RECORD 664-666.

"The Commission was also quite aware of the practical difficulties which the system could encounter. *E.g., see* II RECORD 571-572.

W. at 253-254.710 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 5

centage may have "additional seats in proportion to their total number of votes." Furthermore, no winning party, organization or coalition may have more than three seats in the House of Representatives.

This two percent threshold requirement and the three-seat limit provided in Section 11 were challenged as unconstitutional. In *Veterans Federation Party, et al.* **v.** *COMELEC.,* the Court said that a simple reading of Section 5, Article VI, of the Constitution, easily conveyed the equally simple message that Congress was vested with the broad power to define and prescribe the mechanics of the party-list system of representation. The Constitution explicitly set down only the percentage of the total membership in the House of Representatives reserved for party-list representatives.

A related question was whether the allocated twenty percent of the total House membership set a mandatory number that must be filled or whether it merely set a ceiling. The Court said that in imposing a two percent threshold for parties to qualify for representation, Congress wanted to ensure that only those parties, organizations and coalitions having a sufficient number of constituents deserving of representation were actually represented in Congress. The Court said that this intent could be gleaned from the deliberations on the proposed bill. Thus the Court additionally ruled in *Veterans* that the twenty percent prescription of the Constitution was merely a maximum limit to the number of party-list representatives but the maximum need not be filled.

A more serious controversy, however, was the question of which parties and organizations qualified to be voted for in party-list elections. The issue was threshed out in *Ang Bagong Bayani, et al.* v. *COMELEC* A divided Supreme court made the ruling that the intent of the Constitutional Commission and of the implementing statute, R.A. No. 7941, was not to allow all associations to participate indiscriminately in the system but to limit participation to parties or organizations representing the "marginalized and underprivileged." The Court said: "The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to

G.R. No. 136781, October 6, 2000. *Partido* v. *COMELEC* reiterated the prevailing formula for the computation of additional seats for party-list winners as originally stated in the landmark case of *Veterans.*

G.R. No. 147589, June 26,2001.Sec. 5 ART. VI - THE LEGISLATIVE DEPARTMENT 711

participate directly in the enactment of laws designed to benefit them."

For this purpose, the Court laid down guidelines for the COMELEC to apply in deciding which organizations qualified. Among the guidelines was the requirement that the parties or organizations must represent the marginalized and underrepresented sector. The Court said that even political parties must comply with this requirement. Moreover, the nominees themselves must comply with the qualitative requirement.

What is clear from the decision is that the Court, speaking through Justice Panganiban, sees the party-list system not as a proportional system of representation designed to strengthen democracy but as "sectoral representation" meant to promote social justice. The deliberations of the Constitutional Commission were clearly to the contrary. In the course of the drafting of the provision, Commissioner Villacorta proposed that 30% of the seats in the House of Representatives be allocated equally between sectors and representatives of parties and organizations. The thrust of the proposal was that 3 0 % of the party-list seats should be permanently reserved for marginalized sectors. There was much debate on this on July 2 5 , 1 9 8 6 , but the session adjourned without a solution.

When session resumed on August 1, a group of 22 Commissioners got together to propose a compromise provision saying that *during the first two terms of the House of Representatives* 25 of the party-list seats should be reserved for marginalized sectors. Commissioner Tadeo of the farm sector and Commissioner Lerum of the labor sector were not happy with the compromise. They wanted permanent reserved seats to insure that these seats would not be gobbled up by political parties. An amendment, therefore, was proposed for permanent reserved seats for the underprivileged. The long and the short of it, however, was that, after more debate, the idea of permanently reserved seats was rejected by a vote of 22 against and 19 in favor. What was approved was that "for the first three terms after the ratification of this Constitution twenty-five of the seats allocated to party list representatives shall be filled, as provided by law, by election or selection from" from the marginalized sectors. In other words, twenty-five seats would be reserved but only for three consecutive terms.

In the face of all this, nevertheless, Justice Panganiban concluded in *Ang Bagong Bayani* that all the fifty seats, and not just twenty-five, are reserved for the marginalized sectors, and not just for three consecutive terms but forever.**712 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 5**

When the dissenting opinion of Justice Mendoza pointed to what the *Record of the Constitutional Commission* showed, Panganiban retorted that Commission records should be consulted only when the text of the Constitution is not clear. For him, the text — in spite of the specific three term and fifty percent limitation — was clearly not for twenty-five only but for fifty seats, and not for three terms only but forever. Effectively, he deleted the phrase "For three consecutive terms after the ratification of this Constitution one-half of the seats." Indeed, after such amputation, and only after such amputation, the text becomes clearly on his side.

That is not all. The majority also ruled that party-list nominees "must represent marginalized and underrepresented sectors." This means that nominees who do not have this ideological quality (which incidentally is not easily proved or disproved), they are not qualified to be members of the House of Representatives as party-list representatives. But this is another departure from the constitutional text; this time, however, not by amputation but by grafting. No such ideological requirement is found in Section 6 of Article VI which enumerates the qualifications of a member of the House of Representatives. According to Section 6, the only difference in qualifications between district representatives and party-list representatives is that a party-list representative does not represent a district and therefore need not have resided in a single district for at least one year immediately preceding the election. In fact, neither does R.A. No. 7941 prescribe an ideological qualification:

SECTION 9. *Qualifications of Party-List Nominees.* — No person shall be nominated as party-list representative unless he is a natural-bom citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1) year immediately preceding the day of the election, able to read and write, a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term.**Sec. 6 ART. VI - THE LEGISLATIVE DEPARTMENT 713**

SEC. 6. No **PERSON SHALL BE A MEMBER OF THE HOUSE OF REPRESENTATIVES UNLESS HE IS A NATURAL-BORN CITIZEN OF THE PHILIPPINES AND, ON THE DAY OF THE ELECTION, IS AT LEAST TWENTY-FIVE YEARS OF AGE, ABLE TO READ AND WRITE, AND, EXCEPT THE PARTY-LIST REPRESENTATIVES, A REGISTERED VOTER IN THE DISTRICT IN WHICH HE SHALL BE ELECTED, AND A RESIDENT THEREOF FOR A PERIOD OF NOT LESS THAN ONE YEAR IMMEDIATELY PRECEDING THE DAY OF THE ELECTION.**

1. Qualifications of district and party-list Representatives.

A *district* representative must be a natural-born citizen of the Philippines, a registered voter in the district in which he shall be elected,

and a resident of that district for a period of not less than one year immediately preceding the day of the election. The qualifications must be possessed on the day of the election.[110]

The qualifications of a *sectoral* representative were not explicitly discussed by the Commission. Since, however, *sectoral* representatives were, for a limited period, meant to take the place of party-list representatives and were a prelude to full implementation of the party-list system, they should have the same qualifications as party-list representatives. A *party-list* representative must possess the same qualifications except for the exemption from the requirement of being a resident of a district for at least one year immediately preceding the election. This is because a party-list representative does not represent a district. It is understood, moreover, that implicit in this requirement is that a party-list representative must be a registered voter and a resident of the Philippines. However, as noted above, *Ang Bagong Bayani* seems to have amended the Constitution by adding the requirement that party-list nominees "must represent marginalized and underrepresented sectors."

The citizenship qualification is that a representative must be a natural born citizen of the Philippines. "Natural-bom citizens," according to the Constitution, "are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accor-

***"Compare* with Espinosa v. Aquino, Jr., Senate Electoral Tribunal, Electoral Case No. 9. January 15, 1969.714 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 6**

dance with paragraph (3), Section 1 [of Article IV] shall be deemed natural-bom citizens.""

When the second sentence of Section 4, Article IV, was being discussed by the Constitutional Commission, one objection to it was that it would allow citizens by election to qualify for constitutional positions reserved for natural-born citizens. The new provision was nonetheless accepted on the understanding that, if desired, the distinction between different kinds of natural-bom citizens could be made for purposes of qualifying for constitutional offices when qualification for these offices come up for discussion.[112] When these offices, however, were discussed, no distinction was made. Hence, even citizens by election who are deemed to be natural-born citizens satisfy the citizenship qualification for representatives (as well as for Senators, President, and Vice-President).[113] Moreover, the 2001 case of *Bengzon* v. *Cruz"** ruled that a natural born citizen who loses his citizenship by naturalization in another country but later is repatriated recovers his status of being a natural-born citizen and therefore is qualified to be a member of Congress.

The age qualification is the same as the age qualification for representatives under the 1935 Constitution and for Batasan members under the 1973 Constitution — twenty-five years.

A representative must not only be a *qualified* elector, but he must actually be "a *registered* voter."

As to the residence requirement, the meaning of residence as found in the election law under the 1935 Constitution has been retained. *Gallego v. Verra*[114] summed it up thus:

The term *"residence"* as used in the election law is synonymous with *"domicile,"* which imports not only intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of such intention *(Nuval vs. Guray, 52*

[111] **Article IV, Section 2. *See* dissent discussed under Article IV, Section 3, *supra.***

[112] **"I RECORD 355, 369.**

"This expanded meaning of natural-bom citizenship is not a novel idea. The 1971 Constitutional Convention, which first formulated the definition of a natural born citizen as one who is a citizen from birth without having to perform any act to acquire or perfect his citizenship, acting as the sole judge of the qualifications of the delegates to the Convention, voted to consider Delegate Ernesto G. Ang, a natural-bom citizen and therefore qualified to be a delegate in spite of the fact that Delegate Ang was a citizen by election under the 1935 Constitution.

[113] ***GA.* No. 142840, May 7, 2001.**

[114] **73 Phil.453,455-6(1941).Sec. 6 ART. VI - THE LEGISLATIVE DEPARTMENT 715**

Phil. 645). In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with this purpose. The change of residence must be voluntary; the residence at the place chosen for

the domicile must be actual; and to the fact of residence there must be added the *animus manendi.*

Such residence, according to *Faypon v. Quirino,*[116] is not necessarily lost even through prolonged absence:

A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his avocation, or engaging in business.

The reason for the residence requirement was expressed by *Gallego* thus:"[7]

We might add that the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected.

The definition of residence when written by the Court in *Gallego* had reference to the residence qualification of a Mayor and in *Faypon,* with reference to residence as a requirement for suffrage. The same concept was used for residence as a qualification for representatives in the 1935 Constitution and in the 1973 Constitution. A proposal to make actual physical residence a requirement was rejected by the 1971 Constitutional Convention."[8]

"*96 Phil. 294,299 (1954).

",73 Phil, at 459.

"'Sessions of July 23,1972 and October 12,1972; II RECORD 87 (1986).716 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES

Sec. 6

When the decisions say that "residence" as requirement for Representatives means "domicile," does it mean that a person must be domiciled in the district which he wishes to represent and that he must have been domiciled there for one year immediately preceding his election? Or does it mean that one who has been a temporary resident of a place for a year but has retained his domicile elsewhere may be elected representative of his temporary residence?

It should be noted that the Constitution does not use the word "domiciled." It uses the word "resident." There is a legally recognized difference between residence and domicile. Residence means a place of abode, whether permanent or temporary; domicile means permanent residence to which one, when absent, has the intention to return. Residence, in other words, is not necessarily domicile; but domicile is necessarily residence.

Keeping that distinction in mind, when the Constitution prescribes a residence qualification, does it mean either residence or domicile, or does it mean domicile only? What did the 1935 Constitution, from which this requirement was copied, mean?

The debates about residence during the 1934-1935 Constitutional Convention show that there was a group of delegates led by Delegate Ricardo Nepomuceno, Sr. who favored doing away with any local residence requirement altogether. Nepomuceno argued that it would be "to the interest of the district and to the interest of the Filipino people to choose from as many good Filipinos as may be possible.""[9] This position lost (although later it would win for Senators).

The next debatable point was whether the Constitution should require *actual physical* residence. The first draft of the provision, following the example of the Jones law, provided for *actual* residence. But Delegate Alejandro de Guzman argued against this. He pointed out that residence has two meanings. It can mean either actual or constructive residence (domicile). He argued against narrowing the meaning to only one half of the word. He said that to narrow it thus would deprive the provinces of individuals who, even if absent from the provinces, *"tanto*

"TV PROCEEDINGS OF THE (1934) PHILIPPINE CONSTITUTIONAL CONVENTION 404 (LAUREL Ed.).Sec. 6 ART. VI - THE LEGISLATIVE DEPARTMENT 717

quieren y aman a la provincia y al distrito, mucho mas que los que viven o residen actualment en la provincia."™

De Guzman won the vote. The adjective "actual" was dropped.

The full meaning of residence was restored. But even as late as 1995 the meaning was not yet clear and it became the subject of *Romualdez-*

Marcos v. Commission on Elections'[21] and *Aquino v. Commission on Elections}*[22]

The first case involved the candidacy of Imelda Marcos in her native Leyte. The decision did not contain an opinion which commanded the concurrence of a majority even though the Court did rule that Mrs. Marcos had satisfied the residence requirement. Briefly, there were three approaches to this one conclusion. The first was that Leyte had been her domicile of origin and that in all her life she never lost it. Hence, she was qualified to run. The second was that she did lose her domicile of origin because when she married Ferdinand Marcos she acquired the domicile of her husband; but when Ferdinand Marcos died, she automatically reacquired her domicile of origin, and this, early enough to satisfy the one year residence in her reacquired domicile. The third was that, when Ferdinand Marcos died, she was left free to establish her domicile anywhere and she chose to establish it in Leyte early enough to satisfy the one year residence.

From these three approaches, two conclusions may be drawn.

First, if a person retains his domicile of origin, for purposes of the residence requirement for representatives the one year period is irrelevant because, by legal fiction, wherever he may be, he is a resident of his domicile of origin. Second, if a person re-establishes a previously abandoned domicile or acquire a new one, the one year requirement must be satisfied.[1 2 3]

The case of Agapito Aquino was the reverse of that of Imelda Marcos. Aquino's domicile of origin was Tarlac. The Court ruled that

[23] **W. at 41CM12.**

[1 2] **GJi.No. 119976, September 18, 1995.**

[122] **G.R. No. 120265, September 18,1995.**

[23] **Two doctrinal points were raised by dissenting justices. The first point made was that neither the Supreme Court nor the Commission on Elections had jurisdiction to pass judgment on qualifications because such jurisdiction belongs exclusively to the Electoral Tribunal. The second point, conceding that the Commission on Elections could pass judgment on qualification, said that the Supreme Court could only reverse the Commission on the basis of grave abuse of discretion.718 THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES**

Sec. 6

Aquino had not abandoned his Tarlac domicile and that, even if he had, he had not been in Makati, the district where he had chosen to run, one year immediately preceding the election. Justice Padilla, in addition, made the suggestion that, even if he had not abandoned Tarlac as his domicile but had established residence in Makati for one year immediately preceding the election, he would be qualified. In other words, Padilla's view was that either domicile or residence would suffice provided that the one year physical presence is satisfied. No justice contradicted this view but none affirmed it either.

The residence requirement was further clarified in *Domino* v. ***COMELEC.'***[24] Records showed that petitioner's domicile of origin was Candon, Ilocos Sur and that sometime in 1991, he acquired a new domicile of choice at 24 Bonifacio St. Ayala Heights, Old Balara, Quezon City, as shown by his certificate of candidacy for the position of representative of the 3rd District of Quezon City in the May 1995 election. Petitioner subsequently claimed that he had effectively abandoned his "residence" in Quezon City and had established a new "domicile" of choice in the Province of Sarangani. He contended that his actual physical presence in Alabel, Sarangani since December 1996 was sufficiently established by the lease of a house and lot located therein in January 1997 and by the affidavits and certifications under oath of the residents of that place that they had seen him and his family residing in their locality.

This, however, was found to be insufficient to establish a new domicile. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires a declared and probable intent to make it one's fixed and permanent place of abode, one's home. To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual. The Court, however.

[1 24] **G.R.No. 134015, July 19,1999.Sec. 7 ART. VI - THE LEGISLATIVE DEPARTMENT 719**

found that the lease contract did not engender the kind of permanency required to prove abandonment of one's original domicile. Moreover, he was found to have registered as a voter in one of the precincts of his former barangay in Quezon City.

The enumeration of qualifications in Section 6 is exclusive. Congress may not add anything to it. Thus, the requirement in Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of2002,* that candidates for public office should undergo mandatory random drug testing was declared unconstitutional for candidates for national office in *Social Justice Society v. Dangerous Drugs Board.'*[25]

SEC. 7. THE MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE ELECTED FOR A TERM OF THREE YEARS WHICH SHALL BEGIN, UNLESS OTHERWISE PROVIDED BY LAW, AT NOON ON THE THIRTIETH DAY OF JUNE NEXT FOLLOWING THEIR ELECTION.

No **MEMBER OF THE HOUSE OF REPRESENTATIVES SHALL SERVE FOR MORE THAN THREE CONSECUTIVE TERMS. VOLUNTARY RENUNCIATION OF THE OFFICE FOR ANY LENGTH OF TIME SHALL NOT BE CONSIDERED AS AN INTERRUPTION IN THE CONTINUITY OF HIS SERVICE FOR THE FULL TERM FOR WHICH HE WAS ELECTED.**

1. Term of Representatives.

The Constitution has fixed the term of Representatives at three years to be counted from noon on the thirtieth day of June next following their election. The starting date, however, may be changed by law. The date of election, unless otherwise provided by law, is the second Monday of May preceding the start of a new term. The same rule applies to the Senate.

The three-year term for Representatives was arrived at to facilitate synchronization with the six-year term of the President, Vice-President and the Senators. The term of Representatives first elected under the 1987 Constitution, however, began on June 30, 1987 and, like the term of the Senators elected at the same time, did not end until noon of June

"'G.R. No. 157870, November 3,2008.720 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 7

30,1992.[126] This expiry date, which in effect gave a term of five years to the Members of Congress first elected under the 1987 Constitution, was also arrived at in order to facilitate synchronization of congressional election with the next presidential election.

Aside from fixing the term, the 1987 Constitution has also set a limit on the number of consecutive terms a person may serve as Representative. "No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." If one is elected Representative to serve the unexpired term of another, that unexpired term, no matter how short, will be considered one term for the purpose of computing the number of successive terms allowed.[127]

The three year term set by the Constitution may not be changed by Congress. May Congress, however, pass a law which can have the effect of shortening a Representative's tenure? The case of *Dimaporo* v. *Mitra, Jr.*[128] involved Section 67, Article IX, of the Omnibus Election Code, BP Big. 881, which said that any "elective official whether national or local running for any office other than the one he is holding in a permanent capacity except for the President and Vice-President shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy." After Congressman Dimaporo filed his candidacy for Governor of the Autonomous Region of Muslim Mindanao, he was excluded from the Roll of Members of the House of Representatives. Dimaporo challenged the law as an unconstitutional shortening of his term. He argued that Article VI specifies the conditions under which a member of Congress may lose his seat: voluntary renunciation under Section 7; forfeiture under Section 13; expulsion under Section 16, and disqualification under Section 17.[129]

In upholding the validity of the law the Court said:[130]

... [rjather than cut short the term of office of elective public officials, this statutory provision seeks to ensure that such officials

[126]**Article XVIII, Section 2.**

[127]**II RECORD 592.**

[128]**202 SCRA779(1991).**

***"Id.* at 784.**

***'"Id.* at 790.Sees. 8-9 ART. VI - THE LEGISLATIVE DEPARTMENT 721**

serve out their entire term of office by discouraging them from

running for another public office and thereby cutting short their tenure by making it clear that should they fail in their candidacy, they cannot go back to their former position. This is consonant with the constitutional edict that all public officials must serve the people with the utmost loyalty and not trifle with the mandate which they have received from their constituents." This does not shorten the constitutional term of office. What happens is that the tenure is shortened through voluntary resignation.

Correctly the Court said that the law did not shorten Dimaporo's term; it merely shortened his tenure. Nonetheless the question may be raised whether Congress may, in spite of the rule that *inclusio unius est exclusio alterius,* add to the modes of terminating tenure in Article VI as enumerated by Dimaporo. In point of fact earlier statutes prescribing termination of tenure upon filing of a certificate of candidacy were applicable only to local officials.[131]

There is thus an important distinction between the term and the tenure of an elective official. The term is the period of time allotted to the office by law whereas tenure is the period during which the official actually holds office. The rule now, moreover, affirmed in *Farinas, et al. v. Executive Secretary,"*[2] is that a national elective official does not terminate his tenure by the mere fact of having filed for candidacy to a position different from what he is holding. This new rule was established by the Fair Election Law which repealed a contrary rule in the *Dimaporo* case involving the Omnibus Election Code, BP Big. 881.

SEC. 8. UNLESS OTHERWISE PROVIDED BY LAW, THE REGULAR ELECTION OF THE SENATORS AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE HELD ON THE SECOND MONDAY OF MAY.

SEC. 9. IN CASE OF VACANCY IN THE SENATE OR IN THE HOUSE OF REPRESENTATIVES, A SPECIAL ELECTION MAY BE CALLED TO FILL SUCH VACANCY IN THE MANNER PRESCRIBED BY LAW, BUT THE SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES THUS ELECTED SHALL SERVE ONLY FOR THE UNEXPIRED TERM.

„*See* dissent, Gutierrez, *J.*

'"Farinas, et al. v. Executive Secretary, G.R. No. 147387, December 10, 2003. The current rule returns to what it was under the 1935 Constitution.722 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES

Sees. 8-9

1. Filling vacancies.

"In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term." And, as already noted, service of the unexpired term will be counted as one term for purposes of counting the number of allowable successive terms. Note, moreover, that the holding of special elections has not been made mandatory; and, if held, no set date is prescribed for it. In the case of Senators, for instance, the special election for a vacant seat could wait until the next triennial election for Senators.[1]"

In 2001, a vacancy was created in the Senate when Senator Guingona was made Vice-President to fill a vacancy in the vice-presidency when Vice President Gloria Macapagal-Arroyo was raised to the presidency. The Senate thereupon called on C O M E L E C to fill the vacancy through a special election to be held simultaneously with the regular elections on 14 May 2001. In that election twelve Senators, with a 6-year term each, were due to be elected. When the C O M E L E C issued a resolution providing that the "Senatorial candidate garnering the 13th highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr.," the validity of the resolution was challenged on the ground that the C O M E L E C had failed to notify the electorate of the position to be filled in the special election as required under Section 2 of Republic Act N o . 6645 to require senatorial candidates to indicate in their certificates of candidacy whether they were seeking election under the special or regular elections as allegedly required under Section 73 of Batas Pambansa Big. 8 8 1 . In ignoring this objection the Court ruled that the right and duty to hold special election emanates from the statute and not from a call for the election by some authority like the C O M E L E C . The law itself charges voters with knowledge of the time and place of the election. This is so because a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections fixes the date at which the special election is to be held and operates as the call for that election. Consequently, an election held at the time thus prescribed is not invalidated

by the fact that the body charged by law with the duty of calling the election failed to do so.[134]

SEC. 10. THE SALARIES OF SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES SHALL BE DETERMINED BY LAW. NO INCREASE IN SAID COMPENSATION SHALL TAKE EFFECT UNTIL AFTER THE EXPIRATION OF THE FULL TERM OF ALL THE MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES APPROVING SUCH INCREASE.

1. Salary of Senators and Representatives.

The annual salary of the members of Congress has been initially fixed by Article XVIII, Section 17 at two hundred four thousand pesos, and that of President of the Senate and of the Speaker at two hundred forty thousand pesos. These are subject to change by law. However, "No increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase." This limitation is a carry over from the 1935 Constitution as well as from the 1973 Constitution. Its purpose is to place a "legal bar to the legislators yielding to the natural temptation to increase their salaries. Not that the power to provide for higher compensation is lacking, but with the length of time that has to elapse before an increase becomes effective, there is a deterrent factor to any such measure unless the need for it is clearly felt."[135]

It should be noted that an increase in salary does not take effect "until after the expiration of the full term of *all* the Members of the Senate and of the House of Representatives approving such increase." Although the term of Representatives is only three years, the term of Senators is six years. It is only after the expiration of the six-year term of Senators who approved the increase that the increase in salary becomes effective.[136] Moreover, the retirement benefits of a legislator must be based on the salary in effect during his term and not on the increased salary of the subsequent term.[137]

[134]**Tolentino v. COMELEC. G J 4 . No. 1 4 8 3 3 4 , January 2 1 , 2 0 0 4 .**

[135]**2 TANADA & FERNANDO, CONSTTTUTION OF THE PHILIPPINES 8 6 7 , *quoted* in PHILCONSA v. Mathay, 18 SCRA 3 0 0 , 3 0 7 (1 9 6 6) .**

[136]**<**See* PHILCONSA v. Mathay, 18 SCRA 3 0 0 , 3 0 7 (1 9 6 6) .**

[137]**'"Ligot v. Mathay, 56 SCRA 8 2 3 , 8 2 7 - 8 (1 9 7 4) .724 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**
Sec.10

The 1935 Constitution provided that the fixed annual compensation of legislators already included "per diems and other emoluments or allowances" and excluded only "traveling expenses to and from their respective districts in the case of Members of the House of Representatives and to and from their places of residence in the case of Senators, when attending sessions of the Congress." Hence, a grant of "per diems and other emoluments or allowances" constituted an increase which could take effect only after the expiration of the full term of the Senators and Members of the House approving such per diems and other emoluments or allowances. Thus, it was that the immediate effectivity of a law allowing retirement gratuity and commutation of vacation and sick leave to Senators and Representatives was disallowed in *PHILCONSA* v. *Gimenez.*™ No similar provision on per diems, emoluments, and allowances appeared in the 1973 provision, nor does one now appear in the 1987 provision. The prohibition of immediate increase in the 1987 text refers only to "salaries," the fixed annual amount.[139]

2. Allowances.

The 1935 Constitution allowed for traveling expenses of legislators but it said nothing about office expenses for supplies and personnel. It is common knowledge, however, that the old Congress was generous in providing for office expenses. As a gesture to the clamor for reform, the move in the 1971 Convention to set a limit to allowable travel, office and personnel expenses gained ground and found a place in the earlier drafts. The 1971 Convention eventually withdrew the gesture.

[138]**PHTLCONSA v. Gimenez, 15 SCRA 479 (1965).**

'"It should be pointed out that the 1935 provision did not use the term "salary," which is a fixed amount; rather, it used the broader term "compensation" and then went on to specify that this included various variables, such as "per diems and other [variable] emoluments and allowances" and excluded only "traveling expenses to and from their respective districts in the case of Members of the House of Representatives and to and from their places of residence, in the case of Senators, when attending sessions of the Congress." [Article VI, Section 14 (1935)] The fact that traveling expenses were singled out for exclusion is extremely significant. Traveling expenses, strictly speaking, are not part of compensation but are more in the nature of reimbursement for actual expenses incident to the discharge of one's duties. They do not therefore constitute additional compensation. Peraha v. Mathay, 38 SCRA 256,260-61 (1971). That traveling expenses were singled out for exclusion from the constitutional prohibition implied, because of the principle *inclusio unius, exclusio alterius,* that other forms of "reimbursement" were not similarly excluded. In other words, the 1935 provision showed "how jealous were the members of the [1935] Constitutional

Explaining the deletion of the limitation from the draft, Delegate de Guzman said:[140]

It does not mean that the members of the National Assembly shall not be entitled or shall not enjoy expenditures for travel, supplies, personnel or technical services. It simply means, your Honor, that it is not necessary that we should incorporate it here because the Committee feels that this is an internal matter which could very well be taken up by the National Assembly.

Delegate Yancha explained further:[141]

The National Assembly is granted general legislative powers, particularly in appropriations. The power of the Assembly to enact appropriations is only limited by the provisions in the Constitution; and we feel that appropriating funds for the operational expenses and the maintenance of the National Assembly should not be spelled out anymore in the Constitution because the National Assembly can appropriate those funds.

The 1986 Constitutional Commission chose not to be more strict than the 1971 Constitutional Convention. Does this mean therefore that there is no limit to the amount Congress may appropriate? There is no legal limit. The limit will only be moral, arising from the realization that, according to Section 20, the records and books of account of Congress shall be open to the public in accordance with law and that such books shall be audited by the Commission on Audit which shall publish annually the itemized expenditures for each member.

SEC. 1 1 . A SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES SHALL, IN ALL OFFENSES PUNISHABLE BV NOT MORE THAN SIX YEARS IMPRISONMENT, BE PRIVILEGED FROM ARREST WHILE THE CONGRESS IS IN SESSION. NO MEMBER SHALL BE QUESTIONED NOR BE HELD LIABLE IN ANY OTHER PLACE FOR ANY SPEECH OR DEBATE IN THE CONGRESS OR IN ANY COMMITTEE THEREOF.

1. Privilege from arrest.

The privilege from arrest found in Section 15, Article VI of the 1935 Constitution was the same parliamentary immunity from arrest

**'•"Meeting of the 166-Man Special Committee, November 16,1972.
*'"Id.*726 THE 1987 CONSTITUTION
OF THE REPUBLIC OF THE PHILIPPINES
Sec.11**

enjoyed by the members of the Parliament of England and by members of the United States Congress. As authoritatively interpreted by the Philippine Supreme Court in *Martinez v. Morfe,"*[3] a case involving a delegate to the 1971 Constitutional Convention, contrary to the contention of Delegate Martinez, the privilege did not include immunity from arrest arising from an act or omission punishable by law. It covered only immunity from civil arrests. The Court explained the rationale of the immunity thus:"[13]

The above conclusion reached by this Court is bolstered and fortified by policy considerations. There is, to be sure, a full recognition of the necessity to have members of Congress, and likewise delegates to the Constitutional Convention, entitled to the utmost freedom to enable them to discharge their vital responsibilities, bowing to no other except the dictates of their conscience. Necessarily the utmost latitude in free speech should be accorded them. When it comes to freedom from arrest, however, it would amount to the creation of a privileged class, without justification in reason, if notwithstanding their liability for a criminal offense, they would be considered immune during their attendance in Congress and in going to and returning from the same. There is likely to be no dissent from the proposition that a legislator or a delegate can perform his functions efficiently and well, without the need for any transgression of the criminal law. Should such an unfortunate event come to pass, he is to be treated like any other citizen considering that there is a strong public interest in seeing to it that crime should not go unpunished. To the fear that may be expressed that the prosecuting arm of the government might unjustly go after legislators belonging to the minority, it suffices to answer that precisely all the safeguards thrown around an accused by the Constitution, solicitous of the rights of an individual, would constitute an obstacle to such an attempt at abuse of power. The presumption of course is that the judiciary would remain independent. It is trite to say that in each and every manifestation of judiciary endeavor,

such a virtue is of the essence.
The rationale of limiting the immunity to civil arrests, as expressed by the Supreme Court and reflecting parliamentary experience going back to the mother of parliaments, did not appeal to the wisdom of the
'44 SCRA 22 (1972).
***'Id.* at 37-8.Sec. 11 ART. VI - THE LEGISLATIVE DEPARTMENT 727**
1971 Constitutional Convention. Section 9 of Article VIII of the 1973 Constitution made an assemblyman immune from arrest arising from "all offenses punishable by not more than six years imprisonment." The 1986 Constitutional Commission chose to follow what the 1971 Constitutional Convention did.[144] Needless to say, moreover, the immunity applies for as long as Congress is in session, whether or not the legislator involved is actually attending it.[145]
In the light of the reasoning in the *Martinez* case, however, it is submitted that the expansion of the immunity made by the 1973 and 1987 Constitutions cannot be further expanded by ordinary legislation. In fact, an attempt in the Constitutional Commission itself to extend the protection to immunity from searches was rejected.'[146]
It should also be added that one who has been convicted does not enjoy immunity from arrest. Thus a Congressman who has been convicted of rape and is in detention cannot claim that he should be freed because of popular sovereignty and the need of his constituents to be represented. *People* v. *Jalosjos*,[147] ruled that Members of Congress are not exempt from detention for crime. They may be arrested, even when the House is in session, for crimes punishable by a penalty of more than six months. There is no basis whatsoever for treating him or her differently from other convicts.
2. Parliamentary freedom of speech and debate.
Section 15, Article VI, of the 1935 Constitution provided that "for any speech or debate" in Congress, the Senators and Members of the House of Representatives "shall not be questioned in any other place." *Osmefia, Jr. v. Pendatun*[148] explained the import of this provision thus:
Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its
'[146]The 1973 provision also said that "the Batasang Pambansa shall surrender the Member involved to the custody of the law within twenty-four hours after its adjournment for a recess or its next session, otherwise such privilege shall cease upon its failure to do so." The new Constitution has dropped this on the reasoning that Congress is not the bondsman or custodian of its members, n RECORD 178.
[145]W.at 182-184,195.
'"/d. at 178-185.
[147]G.R. Nos. 132875-76, February 3,2000.
[148]"109 Phil. 863,868-69 (1960).728 THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.11
purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for "it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense."[149] Such immunity has come to this country from the practices of Parliament as construed and applied by the Congress of the United States. Its extent and application remain no longer in doubt in so far as related to the question before us. It guarantees the legislator complete freedom of expression without fear of being made responsible in criminal actions before the courts or any other forum outside of the Congressional Hall. But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.
The 1935 provision was a copy of the speech and debate clause of Article I, Section 6, of the United States Constitution. The 1987 text, as also the 1973 text, is a slight modification of the traditional phraseology but it has preserved the traditional limit and scope of the immunity. In the first place, it is a guarantee of immunity from answerability before an outside forum but not from answerability to the disciplinary authority of Congress itself. In the second place, to come under the guarantee the "speech or debate" must be one made "in the Congress or in any committee thereof." This requirement, however, does not refer merely to the locale of the "speech or debate" but, more importantly, also to its nature. As *Jimenez v. Cabangbang* put it:[150]
Said expression refers to utterances made by Congressmen in the performance of their official functions, such as speeches de-

livered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question.[151]

""Tenney v. Brandhove, 341 U.S. 367.

[150] 17 SCRA 876, 878 (1966).

'"Vera v. Avelino, 77 Phil. 192; Tenney v. Brandhove, 341 U.S. 367; Coffin v. Coffin, 4 Mass. 1 See also Antonino v. Valencia, 57 SCRA 70 (May 27, 1974).Sec. 12 ART VI - THE LEGISLATIVE DEPARTMENT 729

Two American cases shed further light on the nature of the legislative acts protected by the speech and debate clause. *Gravel v. US.*[152] emphasized that although the speech and debate clause has been extended beyond pure speech and debate, the essential requirement for its applicability has always been that the action involved must be legislative action. Legislative action refers to the "deliberative and communicative process" by which members participate in committee and House proceedings in the consideration of proposed legislation or of other matters that the Constitution places within the jurisdiction of the legislature. When legislative action is involved, the testimonial privilege protects even the agents and aides of the members of the legislature. In the light of this, the Supreme Court found that Senator Mike Gravel's alleged arrangement for private publication of the Pentagon Papers was not an integral part of the deliberative and communicative process of legislative activity protected by the speech and debate clause. The vote however was 5 to 4.

In *Brewster v. US.,*[153] the Supreme Court held that a United States Senator was not protected by the speech and debate clause for solicitation and acceptance of a bribe in return for his vote on a legislative question. Again the decision revolved around the nature of a legislative act: "A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech and Debate clause prohibits inquiry only into those things generally said or done in the House in the performance of official duties and the motivation of those acts." A prosecution for taking a bribe does not require such inquiry. Distinguishing the case from *US. v. Johnson,'*[154] the Chief Justice said that the Johnson case involved questioning about the speech, who wrote it, and its factual basis. When however an action is merely related to legislative responsibilities, it is not covered by the clause. The purpose of the clause is merely to protect the integrity of the legislative process. But again the vote was divided 6 to 3.

SEC. 12. ALL MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES SHALL, UPON ASSUMPTION OF OFFICE, MAKE A FULL DISCLOSURE OF THEIR FINANCIAL AND BUSINESS INTERESTS. THEY

[152] 408 U.S. 606 (1972).

[153] 408 U.S.501 (1972).

[154] 383 U.S. 169.730 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES SHALL NOTIFY THE HOUSE CONCERNED OF A POTENTIAL CONFLICT OF INTEREST THAT MAY ARISE FROM THE FILING OF A PROPOSED LEGISLATION OF WHICH THEY ARE AUTHORS.

Sec.13

1. Financial and business interests.

The first sentence of Section 12 sets down a policy of full disclosure of the financial and business affairs of a legislator. The second sentence requires him to put the House on notice about any "potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors." However, it does not prevent the legislator from filing the proposed legislation. It merely enables the House to examine the arguments he might present with a sharper eye and in the context of his personal interest. The advance disclosure would create a presumption in favor of the legislator concerned should he later be charged by his colleagues with conflict of interest.'[155]

S E C 1 3 . No **SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES MAY HOLD ANY OTHER OFFICE OR EMPLOYMENT IN THE GOVERNMENT, OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS OR THEIR SUBSIDIARIES, DURING HIS TERM WITHOUT FORFEITING HIS SEAT. NEITHER SHALL HE BE APPOINTED TO ANY OFFICE WHICH MAY HAVE BEEN CREATED OR THE EMOLUMENTS THEREOF INCREASED DURING THE TERM FOR WHICH HE WAS ELECTED.**

1. Disqualifications.

A member of Congress may not hold, during his tenure as mem-

ber, any other office in the government or in any of its instrumentalities, including government-owned or controlled corporations or their subsidiaries. The prohibited offices include membership in the board of regents, board of trustees, or board of directors of state universities and colleges.[156] Since the prohibition is only during his tenure, a legislator is not prevented from accepting an appointment. However, if he chooses to accept another office, he automatically forfeits his seat in Congress.[157]

'"II RECORD 165-168.

[156]W.at89.

***'"Id.* at 162-3. Compare this with a similar prohibition in Article IX, B, Section 7.Sec.14 ART. VI - THE LEGISLATIVE DEPARTMENT 731**

The disqualification in the second sentence, however, applies for the duration of the six year term even if he resigns from Congress before the end of his term. Under the 1935 and 1973 Constitutions, to come under this disqualification, two conditions must concur: (1) the office must be civil; and (2) such office must have been created or its emoluments increased "while he was a member" of the legislature. Under the 1987 provision, the office need not be a civil one; it could be a military office.[158]

SEC. 1 4 . No **SENATOR OR MEMBER OF THE HOUSE OF REPRESENTATIVES MAY PERSONALLY APPEAR AS COUNSEL BEFORE ANY COURT OF JUSTICE OR BEFORE THE ELECTORAL TRIBUNALS, OR QUASI-JUDICIAL AND OTHER ADMINISTRATIVE BODIES. NEITHER SHALL HE, DIRECTLY OR INDIRECTLY, BE INTERESTED FINANCIALLY IN ANY CONTRACT WITH, OR IN ANY FRANCHISE OR SPECIAL PRIVILEGE GRANTED BY THE GOVERNMENT, OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING ANY GOVERNMENT-OWNED OR CONTROLLED CORPORATION, OR ITS SUBSIDIARY, DURING HIS TERM OF OFFICE. HE SHALL NOT INTERVENE IN ANY MATTER BEFORE ANY OFFICE OF THE GOVERNMENT FOR HIS PECUNIARY BENEFIT OR WHERE HE MAY BE CALLED UPON TO ACT ON ACCOUNT OF HIS OFFICE.**

1. Prohibitions; lawyer legislators.

The prohibitions found in Section 14 are intended to prevent members of Congress from taking advantage, pecuniary or otherwise, of their position in their dealings with the courts, or in their business operations, or in their dealings with any government agency or corporation.

The prohibition imposed on lawyer-legislators is a much stricter one than its counterpart in the 1935 or 1973 Constitution neither of which had a blanket prohibition of appearances in court.[159] Under the 1987 provision, a lawyer legislator may not "personally appear as counsel before any court of justice." This prohibition cannot be circumvented under the guise of appearing "in intervention" in one's behalf. *Puyat* v. *de Guzman*™ dealt with an Assemblyman who bought a nomi-

[158]W. at 45-6.

'"See Article VI, Section 17 (1935) and Article Vin, **Section 11 (1973).**

'"113 SCRA 31,37 (March 25, 1982).732 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.14

nal amount of shares in a corporation which was party to a suit before the Securities and Exchange Commission and then proceeded to appear "in intervention" purportedly to protect his own interest. The Court saw through the ruse and said:

A ruling upholding the "intervention" would make the constitutional provision ineffective. All an Assemblyman need do, if he wants to influence an administrative body is to acquire a minimal participation in the "interest" of a client and then "intervene" in the proceedings. That which the Constitution directly prohibits may not be done by indirection.

One may infer from this conclusion of the Court that a legislator may appear in person if in fact he is a genuine party in the case.

The extent of the prohibition imposed on lawyer legislators was extensively discussed by the 1986 Constitutional Commission. The original proposal submitted by the Conuriittee did not prohibit appearance before collegiate courts. The final version, principally because of the advocacy of Commissioner Colayco, prohibits appearance before any court;[160]' however, it is not a blanket prohibition of the practice of law.[162]

When Commissioner Colayco, himself a judge of fifteen years experience, argued for an absolute prohibition of appearances before any court, the proposal he was espousing read thus: "No Senator or Member of the House of Representatives may appear as counsel before any court." Arguing against allowing Senators and Representatives to appear even before collegiate courts, he said:[163]

It may be argued that insofar as the Supreme Court is con-

cerned the danger may be minimal because they have nothing more to expect as far as promotion is concerned. But what about those below the Supreme Court? For instance, the members of the Intermediate Appellate Courts and the Sandiganbayan always hope that they will be promoted. And like good men, they do not want to have any negative factor that may be an obstacle to their promotion. Legislators are influential people whether they lift a

"II RECORD 123-127.
"W.at 105-6.
by Padilla,,*d.* 125-127.
***'"Id.* at 123-4. Colayco was strongly supported by Romulo, *id.* 124, and strongly opposed**

finger or not. There is always that fear in the mind of the member of the collegiate court that sometime in the future he may need the help of the legislative member appearing before him, although unsolicited.

Colayco's argument was followed by an interpellation by Commissioner Suarez which went thus:[164]

MR. SUAREZ. There is a phrase here which reads: "shall appear as counsel." I suppose the proponent is referring to a personal appearance as counsel.

MR. COLAYCO. That is correct.

MR. SUAREZ. It would not preclude, for example, the law firm to which this Senator or Member of the House would be connected from appearing before any court?

MR. COLAYCO. I would include that in my prohibition.

MR. SUAREZ. In other words, the proponent would prohibit even the law firm to which he or she may be a partner from appearing before any court of justice.

MR. COLAYCO. That is correct, Madam President.

After this exchange, there were more spirited arguments from both sides. But just before the vote, Colayco intervened again and prefaced his remarks by saying: "I would like to say a few words before submitting my proposals to the body for a v o t e . . . . I am afraid I did not know that my proposal will be so unpopular especially with the lawyers who are Members of the legislature."[165] Thereafter, he offered to read his proposal:[166]

MR. COLAYCO I would like to clarify that my proposal covers only the personal appearance of the Members of the House of Representatives and of the Senate.

THE PRESIDENT. So, how would the proposed amendment be?

MR. COLAYCO. It will read: "No Senator or Member of the House of Representatives MAY PERSONALLY appear as counsel

***Id.* at 125.**
W.at 127.
***Id.*734 THE 1987 CONSTITUTION**
OF THE REPUBLIC OF THE PHILIPPINES
Sec.15

before any court OF JUSTICE." With this prohibition, the subsequent lines will be covered already.

Put to a vote immediately thereafter, the proposal was approved 25 to 10.

Did Colayco modify his answer to Commissioner Suarez relative to the appearance of law firms? It would seem so. He modified his original proposal and added "personally." It is quite clear that the personality of a law partnership is distinct from that of its partners.

2. Prohibitions: conflict of interests.

Legislators are also prohibited from being '"directly or indirectly . . . interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office." Thus, they cannot be members of the board of corporations with contract with the government. Such would be at least indirect financial interest.[167] Neither may a legislator "intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office." The prohibited pecuniary benefit could be direct or indirect and thus would cover pecuniary benefit for relatives.[168]

SEC. 1 5 . THE CONGRESS SHALL CONVENE ONCE EVERY YEAR ON THE FOURTH MONDAY OF JULY FOR ITS REGULAR SESSION, UNLESS A DIFFERENT DATE IS FIXED BY LAW, AND SHALL CONTINUE TO BE IN SESSION FOR SUCH NUMBER OF DAYS AS IT MAY DETERMINE UNTIL

THIRTY DAYS BEFORE THE OPENING OF ITS NEXT REGULAR SESSION, EXCLUSIVE OF SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS. THE PRESIDENT MAY CALL A SPECIAL SESSION AT ANY TIME.

1. Sessions of Congress.

Unlike the regular session under the 1935 Constitution, which lasted for only one hundred days, the regular session under Section 15,

[127] **W. at 106-7.**

*"*Id.at* 128.**Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 735**

like that in the 1973 Constitution, may last for as long as Congress wishes but only "until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays." However, the President may call Congress to a special session at any time. And again unlike the special session under the 1935 Constitution which was limited to thirty days, the special session under Section 15, like that in the 1973 Constitution, has no fixed limit. It can last for as long as the Congress wants.

May the President limit the subjects which may be considered during a special session called by him? Under the 1935 Constitution, the President could, because Section 9, Article VI, said that the President could call a special session "to consider general legislation *or only such subjects as he may designate."* The language of the 1987 Constitution is different: "The President may call a special session any time." The language is not exclusive. The President is given the power to call a session and to specify subjects he wants considered, but it does not empower him to prohibit consideration of other subjects. After all, Congress, if it so wishes, may stay in regular session almost all year round.

SEC. 1 6 . (1) THE SENATE SHALL ELECT ITS PRESIDENT AND THE HOUSE OF REPRESENTATIVES ITS SPEAKER, BY A MAJORITY VOTE OF ALL ITS RESPECTIVE MEMBERS.
EACH HOUSE SHALL CHOOSE SUCH OTHER OFFICERS AS IT MAY DEEM NECESSARY.
(2) A MAJORITY OF EACH HOUSE SHALL CONSTITUTE A QUORUM TO DO BUSINESS, BUT A SMALLER NUMBER MAY ADJOURN FROM DAY TO DAY AND MAY COMPEL THE ATTENDANCE OF ABSENT MEMBERS IN SUCH MANNER, AND UNDER SUCH PENALTIES, AS SUCH HOUSE MAY PROVIDE.
(3) EACH HOUSE MAY DETERMINE THE RULES OF ITS PROCEEDINGS, PUNISH ITS MEMBERS FOR DISORDERLY BEHAVIOR, AND WITH THE CONCURRENCE OF TWO-THIRDS OF ALL ITS MEMBERS, SUSPEND OR EXPEL A MEMBER. A PENALTY OF SUSPENSION, WHEN IMPOSED, SHALL NOT EXCEED SIXTY DAYS.
(4) EACH HOUSE SHALL KEEP A JOURNAL OF ITS PROCEEDINGS, AND FROM TIME TO TIME PUBLISH THE SAME, EXCEPTING SUCH PARTS AS MAY, IN ITS JUDGMENT, AFFECT NATIONAL SECURITY; AND THE *YEAS* **AND** *NAYS* **ON ANY QUESTION SHALL, AT THE REQUEST OF ONE-FIFTH OF THE MEMBERS PRESENT, BE ENTERED IN THE JOURNAL.[736] THE 1987 CONSTTTUTION OF THE REPUBLIC OF THE PHILIPPINES**
EACH HOUSE SHALL ALSO KEEP A RECORD OF ITS PROCEEDINGS.
(5) NEITHER HOUSE DURING THE SESSIONS OF THE CONGRESS SHALL, WITHOUT THE CONSENT OF THE OTHER, ADJOURN FOR MORE THAN THREE DAYS, NOR TO ANY OTHER PLACE THAN THAT IN WHICH THE TWO HOUSES SHALL BE SITTING.
Sec. 16

1. Officers of Congress.

Congress becomes properly organized once the officers have been chosen. The only officers prescribed by the Constitution are the President of the Senate and the Speaker of the House of Representatives, both of whom are elected by a majority vote of all the Members **of** their respective Houses. Each House, however, may decide to have other **officers**. How these other officers are chosen is something that is within the control of each House. Thus, when Senator Tatad challenged the validity of the election of Guingona as minority leader claiming that **he** should be the minority leader, the Court said in *Santiago* v. *Guingona'*[so] that "in the absence of constitutional or statutory guidelines **or** specific rules, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto. On grounds **of** respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province **of** courts to direct Congress how to do its work."

An interesting question which arose under the 1935 Constitution was whether the judiciary could look into the legality of the election **of** a Senate President. For the answer, one can look to the Supreme Court**'s** handling of the matter in *Avelino v. Cuenco.*™

During the Senate session of February 2 1 , 1 9 4 9 , Senate President Avelino walked out of the session hall followed by nine other senators. This left only twelve senators in the session hall. (Of the twenty-four

senators, one was in the United States and another in a local hospital.) The Senate President Pro-Tempore then took over and, by a resolution approved by the twelve remaining senators, the position of Senate President was declared vacant, and Senator Cuenco was designated Acting Senate President. Avelino brought the case to court asking whether the
'Santiago v. Guingona, G.R. No. 134577, November 18,1998
'83 Phil. 17 (1949).Sec.16 ART. VI - THE LEGISLATIVE DEPARTMENT 737
twelve senators who had designated Cuenco Senate President constituted a quorum.

By a vote of 6-4, the Court refused to assume jurisdiction. It declared that the controversy was political in nature and that the constitutional grant to the Senate of the power to elect its own president should not be taken over by the judiciary. The choice of a Senate President "affects only the Senators themselves who are at liberty at any time to choose their officers, change or reinstate them."[171] Furthermore, the Court said:[172]

The Court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead into a crisis, even a revolution. No state of things has been proved that might change the temper of the Filipino people as a ***[sic]*** peaceful and law-abiding citizens. And we should not allow ourselves to be stampeded into a rash action inconsistent with the calm that should characterize judicial deliberations.

Chief Justice Moran, Justices Tuason, Perfecto and Briones argued for assuming jurisdiction.

Moran argued that the question of quorum was a constitutional issue which could be decided by neither of the two conflicting Senate factions. With the conflict remaining unsettled, the laws passed by the Senate would be open to doubt. He warned against the "general situation of uncertainty, pregnant with grave dangers" which was "developing into confusion and chaos with severe harm to the nation." He therefore advocated intervention by the Court, the guardian of the Constitution, through the exercise of "the utmost judicial temper and judicial statesmanship."[173]

Justice Tuason's reasoning ran thus:[174]

Here the process sought is to be issued against an appointee of a Senate, that, it is alleged, was not validly constituted to do business because . .. there was no ***quorum.*** The Court is not asked to interfere with an action of a coordinate branch of the govem-
„*Id.* at 21-2. But, jurisdiction or not, eight Justices voted 4-4 on the question.
„*Id.*
„*Id.* at 25-6.
.,,W.at66-7.738 THE 1987 CONSTITUTION
OF THE REPUBLIC OF THE PHILIPPINES
Sec.16
merit, so much as to test the legality of the appointment of the respondent.

. . . Although this Court has no control of either branch of the Congress, it does have the power to ascertain, whether or not one who pretends to be its officer is holding his office according to law or the Constitution. Political questions as a bar to jurisdiction can only be raised by the supreme power, by the legislature, and not by one of its creatures.

Justice Perfecto conceded that the Senate was the only body that could determine from time to time "who is and shall be its President."[175] But, he added:[176]

[I]n making such changes of leadership, the Senate and the Senators are bound to follow the orderly processes set and outlined by the Constitution and the rules adopted by the Senate as authorized by the fundamental law. Any step beyond said legal bounds may create a legal hiatus which, once submitted to the proper courts of justice, the latter cannot simply wash their hands and ignore the issue upon the pretext of lack of jurisdiction . . .

Justice Briones was for assuming jurisdiction because the heart of the controversy was the business of legislation, one of the essentials of a republic. Moreover, *"el conflicto surgido . . . ha cobrado las proporciones de una tremenda crisis nacional, prenada de graves peligros para la estabilidad de nuestras instituciones politicas, para el orden publicoypara la integridadde la existencia de la nation."""* Finally, he agreed with *Werts v. Rogers* that, besides justiciability, another ground for courts to take cognizance of a case is *"extrema necesidad."*™ But six Justices remained unconvinced.

In the case of *Alejandrino v. Quezon,* Justice Ostrand had said: "It is usually when courts fail in these respects [performance of duties], and thus prove unfaithful to their trust, that their orders are disregarded and trouble ensues."[179] Whether or not the 6-4 vote in the original reso-

„*Id.* at 38.
""*Id.* at 52.
[177] W.at58.
„*Id.* at 69.
[17] 16Phil. 142-3(1910).Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 739

lution of the Court in *Avelino v. Cuenco* meant a failure in judicial duties will forever be a subject of debate. But trouble did ensue. Following the constitutional provision that in the absence of a *quorum* "a number may adjourn from day to day and may compel the attendance of absent Members," the Cuenco group issued orders for the arrest of absenting Senators. But the orders were ignored.

Originally, the Court had said that no circumstances had been proved which could change the pacific and law-abiding temper of Filipinos. Now there were indications that the Filipino temper was being taxed severely. Chief Justice Moran and Justice Briones had already spoken of a situation pregnant with grave dangers. Thus it was that, in the reconsideration of the case, the Court, by a vote of 7-4, decided to assume jurisdiction "in the light of subsequent events which justify its intervention."[180]

The language of Justice Pablo was solemn and sacrificial:[181]

Es un sano estadismo judicial evitarlo [fatales consecuencias]y, si es necesario, impedirlo ... Como magistrado, no deben importarme las consecuencias de mi opinion, emitida despues de un estudio concienzudo; pero como ciudadano, me duele ver una lucha enconada entre dos grupos en el senado sin fin practico ...Si insisto en mi opinion anterior, fracasara todo esfuerzo de reajuste de nuestras opiniones para darfin a la crisis en el Senado.

Justice Feria, however, was more radical. He was for establishing "in this country, judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, *not only in justiciable but political questions as well"™*[2]

If Justice Feria's reasoning had been the decisive factor in the reconsideration, this case would constitute a radical change in the Court's attitude to political questions. But what caused the reversal of the Court's original resolution were the peculiar circumstances that had developed in the political scene. The Court Resolution on reconsideration

[8]°83 Phil. 68 (1949).
***"Id.* at 74-5.**
***"Id.* at 71. Italics added.740 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.16**

spoke of "subsequent events" which justified its intervention."[3] Justice Pablo, in reversing his stand, admittedly yielded only to a citizen's desire for the settlement of the Senate crisis. Thus, when two years later, in 1951, the case of *Avelino v. Cuenco* was invoked in the case of *Cabili v. Francisco* as authority for the Supreme Court to intervene in the allegedly unconstitutional reorganization of the Commission on Appointments, the Court ruled that the conditions which impelled the Court to assume jurisdiction in the Avelino case did not presently obtain.[184]

2. "A quorum to do business."

For a long time the accepted practice in the House of Representatives of the United States, operating under a provision on quorum identical with the one found in Section 16(2), was that only members voting on a proposition were counted for the purposes of determining a quorum. In 1890, however, Speaker Reed ruled that all members present, whether voting or not voting, should be counted. This ruling eventually became Rule XV of the House and the U.S. Supreme Court upheld the rule saying that, since the Constitution did not prescribe the method for determining the presence of a majority, the House was competent "to prescribe any method which shall be reasonably certain to ascertain the fact."[185]

The base for computing the majority of the legislative body for the purpose of determining the existence of a quorum should normally be the total membership of the body. It will be noted, however, that in the case *of Avelino v. Cuenco™*[6] the base used was twenty-three, although the total membership of the Senate was twenty-four. Apparently this was because the twenty-fourth senator was abroad and therefore

„*U.* at 68.

184G.R. No. 4638, May 8,1951.16 LJ. 302,303. The facts of the case were as follows: As a result of a new party alignment that divided the Senate into two factions, the Little Senate and the Democratic Group, the latter commanding a majority, a reshuffle was made of the membership in the Commission on Appointments. The Senators composing the so-called Little Senate filed a petition with the Supreme Court seeking to annul the reorganization of the Commission on Appointments.

„hile not assuming jurisdiction over the case, the Court discussed the legality of the reshuffle. Four Justices held that membership in the Commission on Appointments should at all times reflect party alignment. Four others held that the constitution contemplated stability of tenure for the members, irrespective of subsequent change in party alignment.

•"United States v.Ballin, 144 U.S. 1,5-6(1892)

"*83 Phil. 17(1949).Sec.16 ART. VI - THE LEGISLATIVE DEPARTMENT 741

beyond the coercive power of the Senate,[187] although this manner of approaching the subject can lead to the ridiculous should the majority of the legislative body be abroad and beyond the coercive power of the body.

3. Internal rules and discipline.

Inherent in any legislative body is its power of internal regulation and discipline. As Justice Story said, "If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power; and it would be absurd to deprive the councils of the nation of a like authority."[188] Article VI, Section 10(3) of the 1935 Constitution said: "Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the consent of two-thirds of all its Members, expel a member." The 1973 counterpart modified the above rule by prescribing the number of votes needed to impose a suspension and by limiting suspension to sixty days. The 1987 provision follows that of 1973. In other respects, the 1935 provision has been preserved; hence, jurisprudence prior to 1973, *mutatis mutandis,* still applies.

What stands out from the jurisprudence on the subject is that, except for some limitations of detail found in the Constitution itself, there is a clear recognition of the overall autonomy of the legislative body both in the formulation and in the application of its rules. "The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal."[189]

The well-nigh absolute control which the legislature has over its rules is well illustrated by the celebrated case of *Osmefia, Jr.* ***v.*** *Pendatun.*[m] Disciplinary proceedings were initiated by the House of Representatives against Congressman Sergio Osmeiia, Jr. for a speech he had delivered on the floor of Congress. In a petition filed with the Supreme

"7d.at68.

""STORY, *COMMENTARIES* 835 (1833).

"'United States v. Ballin, 144 U.S. 1.5 (1892).

"°109 Phil. 863 (1960).742 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec. 16

Court for declaratory relief and ***certiorari*** and prohibition Osmefia alleged, among others, (1) that his speech did not constitute disorderly behaviour and (2) that, by House Rule XVII, Section V, he could not be censured for his speech since other business had transpired before Congress decided to take action.

On the question whether Osmena's speech constituted disorderly behavior, the Supreme Court simply said "that the House is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which can not be depicted in black and white for presentation to, and adjudication by the Courts.... The theory of separation of powers, fastidiously observed by this Court, demands in such situation a prudent refusal to interfere."[191] On the question of the binding force of Rule XVII, Section V, the Court said:[192]

[CJourts have declared that "the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them."[193] And it has been said that "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body." Consequently, "mere failure to conform to parliamentary usage will not invalidate the action (taken by a deliberative body) when the requisite number of mem-

bers have agreed to a particular measure."[194]
It is thus clear that on matters affecting only the internal operation of the legislature, the legislature's formulation and implementation of its rules is beyond the reach of the courts. In these matters, what is referred to as the "expanded jurisdiction" of the Supreme Court found in the second sentence of Article VIII, Section 1 does not apply. When, however, the legislative rule affects private rights, the courts cannot altogether be excluded. When the construction to be given to a rule affects persons other than the members of the legislature, "the question presented is of necessity a judicial one."[195]

„*Id.* at 871-2.
""*Id.* at 870-1.
"₅67 CJ.S.870.
'"South Georgia Power v. Bauman, 169 Ga. 649; 159 S.W. 515.
„United States v. Smith, 286 U.S. 6 (1932). *See also* Vera v. Avelino, 77 Phil. 192, 206 (1946)Sec. 16 ART. VI - THE LEGISLATIVE DEPARTMENT 743

The case of *Paredes, Jr. v. Sandiganbayan*[196] presented a novel question. Congressman Ceferino Paredes was charged with violations of the Anti-Graft Law allegedly committed while still a provincial governor. The Sandiganbayan took action on the case while Paredes was already in his second term as a member of the House of Representatives. Relying on the provision of the Anti-Graft Law which prescribes a mandatory preventive suspension on all those charged the law, the Sandiganbayan suspended him from the House of Representatives. Claiming that under Section 16(3) of Article VI only the House could suspend him, Paredes went to the Supreme Court on *certiorari.* On the argument that the suspension imposed by the graft court was not based on grounds found in Section 16(3), the Supreme Court upheld the suspension. Whereupon the House erupted in protest.

One thing which must have rubbed the members of the House of Representatives the wrong way was that, all Paredes got from the Court was a one page resolution containing a curt "Nyet." Moreover, in an earlier decision the Court had ruled that no judge of inferior courts may be proceeded against by investigating bodies without prior clearance from the Supreme Court. The Court demanded observance of the procedure prescribed by the Constitution which places administrative supervision of lower courts in the exclusive hands of the Supreme Court. The Court could have accorded the same procedural courtesy to the House of Representatives; but it did not. Alternatively, the Court might have said that the preventive suspension referred to by the Anti-Graft Law was meant to be from the office the official held when he committed the wrong doing. But the Court chose to be literal. Hence, when the House decided not to implement the suspension, the Court could do nothing.

4. rolled bill" rule.

Journals, Record: publicity and probative value; "en-

The duty to keep a journal has a dual purpose: (1) "to insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members to their respective constituents,""[7] and (2) to

„GJi. 118364,August 10,1995.
""1 STORY, *COMMENTARIES* 840, quoted with approval in Field v. Clark, 143 U . S . 649, 670 (1892).744 THE 1987 CONSTITUTION
OF THE REPUBLIC OF THE PHILIPPINES
Sec.16

provide proof of what actually transpired in the legislature. Under the 1935 Constitution, Congress could impose secrecy at its discretion. The 1973 Constitution and the 1987 Constitution exempt from publication only such matters "as may, [in each House's] judgment, affect national security." This rule is an application of Section 7 of the Bill of Rights which says:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

It still remains to be seen, however, how the rule can be enforced and who can enforce it against Congress.

The interesting cases on legislative journals involve their probative value when measured against other forms of evidence. In *United States* v. *Pons,*[m] the contention of the defendant was that the statute under which he was being prosecuted was invalid for having been

passed after the last allowable day of legislative session. He claimed that the legislature's clock had been stopped at midnight on the last day of session and that it was in fact after midnight that the statute was passed. The legislative journal, however, indicated that the statute was passed before midnight when the legislature adjourned *sine die*. Could the courts then look beyond the journal to determine the actual date of adjournment?

The Court answered:[199]

Counsel for the appellant, in order to establish his contention, must necessarily depend upon the memory or recollection of witnesses, while the legislative journals are the acts of the Government or sovereign itself. From their very nature and object the records of the Legislature are as important as those of the judiciary, and to inquire into the veracity of the journals of the Philippine Legislature, when they are, as we have said, clear and explicit, would be to violate both the letter and the spirit of the organic laws by which the Philippine Government was brought into exis-

tence, to invade a coordinate and independent department of the Government, and to interfere with the legitimate powers and functions of the Legislature. But counsel in his argument says that the public knows that the Assembly's clock was stopped on February 28, 1914, at midnight and left so until the determination of the discussion of all pending matters. Or, in other words, the hands of the clock were stayed in order to enable the Assembly to effect an adjournment apparently within the time fixed by the Governor's proclamation for the expiration of the special session in direct violation of the Act of Congress on July 1, 1902. If the clock was, in fact, stopped, as here suggested, "the resultant evil might be slight as compared with that of altering the probative force and character of legislative records, and making the proof of legislative action depend upon uncertain oral evidence, liable to loss by death or absence, and so imperfect on account of the treachery of memory. Long, long centuries ago, these considerations of public policy led to the adoption of the rule giving verity and unimpeachability to legislative records. If that character is to be taken away for one purpose, it must be taken away for all, and the evidence of the laws of the state must rest upon a foundation less certain and durable than that afforded by the law to many contracts between private individuals concerning comparatively trifling matters."

Thus, what gives conclusive weight to the journal, when balanced side by side with extraneous evidence, is the fact that it is an official act of the legislature. What happens, however, when the journal conflicts with another official act of the Legislature? In *Mabanag v. Lopez-Vito,*[200] the Supreme Court discussed at length the correct resolution of a case when the journal's content conflicts with what is found in an "enrolled bill." The "enrolled bill" is a duly authenticated copy of a bill or resolution bearing the signature of the Speaker and of the Senate President and the certification of the secretaries of both Houses that such bill was passed.[201] The Court arrived at the conclusion, based likewise on the respect due from the courts to a co-equal body, that "a duly authenticated bill or resolution imports absolute verity and is binding on the courts."[202] Although *Mabanag* was most emphatic in its acceptance of the "enrolled bill rule," it cannot be regarded as establishing a definite dbc-

trine because, in fact, there was no evidence of conflict between the journal and the enrolled bill.[203] Withal, however, subsequent cases have also been most emphatic in their adherence to the enrolled bill rule. As the Court said in *Casco Philippine Chemical Co.* v. *Gimenez:*[10]* "If there has been any mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Executive, on which we cannot speculate, without jeopardizing the principle of separation of powers and undermining one of the cornerstones of our democratic system, the remedy is by amendment or curative legislation, not by judicial decree."

The same principle was once more reiterated in *Morales* v. *Subi-*

do[m] which, however, added a cautionary note:

By what we have essayed above we are not of course to be understood as holding that in all cases the journals must yield to the enrolled bill. To be sure there are certain matters which the Constitution[206] expressly requires must be entered on the journal of each house. To what extent the validity of a legislative act may be affected by a failure to have such matters entered on the journal, is a question which we do not now decide.[207] All we hold is that with respect to matters not expressly required to be entered on the journal, the enrolled bill prevails in the event of any discrepancy.

It should be noted that what gives special probative weight to an enrolled bill is the certification it receives from the officers of the legislature. In the case of Congress under the 1935 Constitution, the signatures of the Speaker of the House of Representatives and of the President of the Senate were what counted. Thus, when, as happened in *Astorga* v. *Villegas*[10]* not only the Senate President but also the President of the Philippines withdrew their signatures upon discovery of the inaccuracies in the bill, the document was stripped of the character and probative value of an enrolled bill and had to yield to the version found in the journal. In *Tolentino v. Secretary of Finance*,[209] even though the

[m]***Id.at*** **18.**

• *»! SCRA 347, 350 (1963).

[m]***27*** **SCRA 131 (1969).**

""Art. VI, Sees. 10(4), 20(1) and 21(1) (1935).

[m]***Cf. e.g.,*** **Wikes Country Comm'rs v. Color, 180 U.S. 506 (1900)**

™56 SCRA 714,722-3 (April 30, 1974).

[20,235] **SCRA 630,672 (1994), affirmed on reconsideration GJt. Nos. 111206-08 October 6,1995.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 747**

challenge to the bill came from an incumbent Senator and a former Senate President, the Court refused to go beyond the "enrolled bill."

In addition to a journal, each House is also supposed to keep a Record.[210] The journal is usually an abbreviated account of the daily proceedings; the Record contains a word for word transcript of the deliberations of Congress.

5. Recess.

Both Houses may hold session practically all year round. They go on compulsory recess thirty days before the opening of the next regular session. Each House may also adjourn for a voluntary recess; but neither House may adjourn, without the consent of the other, for more than three days nor to any place than that in which the two Houses shall be sitting. This coordinative rule is necessary because the two houses form only one legislative body.

SEC. 1 7 . THE SENATE AND THE HOUSE OF REPRESENTATIVES SHALL EACH HAVE AN ELECTORAL TRIBUNAL WHICH SHALL BE THE SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THEIR RESPECTIVE MEMBERS. EACH ELECTORAL TRIBUNAL SHALL BE COMPOSED OF NINE MEMBERS, THREE OF WHOM SHALL BE JUSTICES OF THE SUPREME COURT TO BE DESIGNATED BY THE CHIEF JUSTICE, AND THE REMAINING SIX SHALL BE MEMBERS OF THE SENATE OR THE HOUSE OF REPRESENTATIVES, AS THE CASE MAY BE, WHO SHALL BE CHOSEN ON THE BASIS OF PROPORTIONAL REPRESENTATION FROM THE POLITICAL PARTIES AND THE PARTIES OR ORGANIZATIONS REGISTERED UNDER THE PARTY-LIST SYSTEM REPRESENTED THEREIN. THE SENIOR JUSTICE IN THE ELECTORAL TRIBUNAL SHALL BE ITS CHAIRMAN.

1. Composition.

Section 17 sets down the composition of the two Electoral Tribunals. Like the Electoral Tribunals of the 1935 Constitution, they are a mixture of members of Congress and of the Supreme Court, "thus reflecting both the respect for parliamentary sovereignty and the need for

[21(] **This provision, the second sentence of Section 16(4), was a last minute addition. V RECORD 702.748 THE 1987 CONSTTTUTION**

OF THE REPUBLIC OF THE PHILIPPINES

Sec. 17

legal impartial decisions."[2]" The legislative part of the mix, however, departs from the 1935 rule which gave three seats each to only the two political parties having the largest number of votes in each House. The 1987 formula of proportional party representation reflects the Constitution's desire to encourage the growth of a multi-party system. It should be noted, however, that representation in the Electoral Tribunals is given to "political parties and the parties or organizations registered under the party-list system." There is no provision for the representation of sectors except in so far as they might be part of the party-list system.[212]

The Supreme Court has had occasion to deal with problems arising from the partisan element in the Electoral Tribunals. In *Abbas* v.

Senate Electoral Tribunal, Abbas sought to disqualify all six Senator members of the Electoral Tribunal on the ground that they, together with all the other Senators, were respondents in the contest filed by the opposition party. He therefore wanted his case to be decided solely by the three Supreme court justices in the Electoral Tribunal. In rejecting such contention the Supreme Court said:[213]

Where as here a situation is created which precludes the substitution of any Senator sitting in the Tribunal by any of his other colleagues in the Senate without inviting the same objections to the substitute's competence, the proposed mass disqualification if sanctioned and ordered would leave the Tribunal no alternative but to abandon a duty that no other court or body can perform but which it cannot lawfully discharge if shorn of the participation of its entire membership of Senators.

The case of *Bondoc* v. *Pineda",*[4] involved a blatant attempt of a political party to manipulate the decision of the Tribunal by manipulating its membership. On the eve of the promulgation of a decision of the Tribunal against a member of the Laban ng Demokxatikong Pilipino (LDP), the L D P expelled Camasura from the party on the ground of disloyalty. Camasura, the L D P member of the Electoral Tribunal, had confided to the L D P that he was voting against the party's candidate. The Supreme Court considered the expulsion of Camasura from the

[2]**"U RECORD 45.**

[4]***Id.* at 590.**

[213]**166 SCRA 651.655 (1988).**

[3]***201 SCRA 792 (1991).Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 749**

Tribunal a clear impairment of the Tribunals prerogative to be the sole judge of election contests.[215]

2. Jurisdiction of the Electoral Tribunals.

What is the meaning and scope of the power of the Electoral Tribunals to be judge of congressional election contests? To answer this question, it is useful to trace the history of the provision from its counterpart in the United States Constitution and through the various Philippine organic laws that preceded the present Constitution. The original provision on this subject is found in Section 7, paragraph 5, of the Act of the United States Congress of July 1,1902. The Act provided that "the assembly shall be the judge of the elections, returns, and qualifications of its members." The provision was taken from Section 5, Article 1 of the Constitution of the United States providing that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members." The Act of the United States Congress of August 29,1916, Section 18, paragraph 1, modified the provision to read "That the Senate and House of Representatives, respectively, shall be the *sole* judges of the elections, returns, and qualifications of their elective members." The effect of this modification was to emphasize the exclusive character of the jurisdiction conferred upon each House..[216] This exclusive grant of jurisdiction at once effectively barred either House from interference with the judgment of the other House and also completely removed the subject matter from the jurisdiction of the courts in language that was "full, clear and complete.".[217]

The 1935 Constitution made a significant departure from earlier provisions by providing in Article VI, Section 4, thus: "There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of all members of the National Assembly." Thus, a power

[215]**W. at 810-812. *See* dissent of Padilla and Sarmiento saying that the decision impairs the independence of the House.**

[216]**Angara v. Electoral Commission, 63 Phil. 139,162 (1936).**

[217]**Veloso v. Board of Canvassers, 39 Phil. 886,888 (1919).750 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES**

Sec.17

traditionally lodged in the legislative body itself was taken away and given "to an independent, impartial and non-partisan tribunal."[218] The innovation was in answer to "the long-felt need of determining legislative contests devoid of partisan considerations."[2]"

The effect of this provision, however, was not to divest the legislature of all power relative to the election, returns, and qualifications of its members and thus render it powerless to protect its own integrity. What

was transferred to the Electoral Commission was merely the power to be the "sole judge of all contests." The significance of this language was explained in *Vera v. Avelino* thus:[220]

The Convention did not intend to give it ***all*** the functions of the Assembly on the subject of election and qualifications of its members. The distinction is not without a difference. "As used in constitutional provisions," election contest "relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into office."[221]

Where, therefore, no defeated candidate challenges the credentials of a member in order not only to dislodge him but also to take his seat, the legislative body itself, in the exercise of its inherent right of self-preservation, may inquire into the credentials of the member and judge his qualifications. When a member of the legislative body challenges the qualification of another, an "election contest" does not thereby ensue, because the former does not seek to be substituted for the latter, and, hence, it is the legislative body itself and not the Commission, which has jurisdiction over the question raised.[222]

When the National Assembly of the 1935 Constitution was abolished by a 1940 amendment which created a bicameral Congress, the identical powers given to the Electoral Commission of the National Assembly were transferred to the respective Electoral Tribunals of the Senate and House of Representatives.

[218] **63 Phil, at 170.**

[2] **"W. at 175. The Constitutional Convention debates on the subject are dealt with at length** ***id.*** **at 164-170.**

^ P h i l . 192,209(1946).

"'LAUREL on ***ELECTIONS,*** **Second Edition, p. 250; 20 C J 58**

[n] ***Id.*** **at 210-211.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 751**

Under the 1973 Constitution, these powers, as delineated in *Vera v. Avelino,* were given to the Commission on Elections. There was no Electoral Tribunal under the 1973 Constitution. Similarly, the same powers to judge qualifications retained by the National Assembly under the 1935 Constitution and by the Senate and House of Representatives under the 1940 amendment were retained by the *Batasang Pambansa* under the 1973 Constitution.

Under the 1987 Constitution the C O M E L E C decides who the winner is in an election. A person holding office in the House must yield his or her seat to the person declared by the C O M E L E C to be the winner and the Speaker is duty bound to administer the oath.[223] The Speaker should administer the oath on the winner.

But since the C O M E L E C administers all election laws, when does a controversy leave the C O M E L E C ' s control? In election contests, the jurisdiction of the C O M E L E C ends once a candidate has been proclaimed and has taken his oath of office as a Member of Congress. Jurisdiction then passes to the Electoral Tribunal of either the House or the Senate. This is true even if there is allegation that the proclamation was invalid. The Tribunal will decide that too.[224]

But up to what point may the C O M E L E C entertain protests before proclamation? This was the question in *Sanchez* **v.** *COMELEC*[225] and *Chavez v. COMELEC*.[226] In both cases the candidates who were trailing in the announced count wanted the COMELEC to withhold proclamation until a recount could be made of the votes. In *Sanchez,* the contention of the candidate was that the name of another Sanchez who had been disqualified had not been removed from all the voting precincts. He claimed that in the process of counting, a vote for Sanchez without specification of given name had been considered an invalid vote. He therefore wanted the ballot boxes reopened for purposes retrieving the invalidated Sanchez votes. The situation in *Chavez* was similar.

In deciding against Sanchez the Court laid down the premise that "the policy of the election law is that pre-proclamation controversies

[223] **Codilla v. de Venecia, G.R. No. 150605, December 10,2002.**

^Aggabao v. COMELEC, GR. No. 163756, January 26, 2005; Vinzons-Chato v. COMELEC,GR.No. 172131, April 2,2007.

[223] **153 SCRA 67 (1987).**

^ I I SCRA 315 (1992).752 THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Sec.17

should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible." Hence, under the Omnibus Election Code in effect then, the scope of pre-proclamation controversy was limited to incomplete returns, or returns with material defects, or returns which appeared to be tampered with, falsi-

fied or prepared under duress, or containing discrepancies in the votes credited to any candidate the difference of which would affect the results. Any thing else outside of these should be brought before the Electoral Tribunal.[227]

In *Chavez,* the Court reached an identical result. The policy of the law enunciated in *Sanchez* was by then embodied in R.A. N o . 7166 which prescribed that no pre-proclamation controversies were allowed for the election of President, Vice-President, Senators and Members of the House of Representatives except in the case of "manifest error in the certificate of canvass or election returns." Errors which cannot be verified except by the opening of the ballot boxes are not "manifest errors." Hence, as in Sanchez, the proper remedy was recourse to the Electoral Tribunal.[228]

Another question that need be answered is: What does to "judge qualifications" mean? In other words, can the Tribunal disqualify a member on the basis of qualifications or disqualifications not found in the Constitution itself? Or, put differently, can the legislature add to the qualifications and disqualifications found in the Constitution?

Since a member of Congress must be a "registered voter"[229] and since Congress may determine who are disqualified from voting,[230] it is evident that through its limited power over the right of suffrage Congress may in effect create disqualifications. The question of additional "qualifications," however, is a different matter. From the care with which the qualifications were formulated and from the absence of an explicit grant of power to add to the qualifications enumerated by the Constitution, it may be inferred that the enumeration is meant to be exclusive. It will be noted that in the instance where the Constitution means to enumerate merely minimum qualifications, as in the case of

'153 SCRA at 75.
'211 SCRAat321,324.
'Article VII, Sections 3 and 6.
'Article V, Section 1.Sec.17 ART. VI - THE LEGISLATIVE DEPARTMENT 753

judges of lower courts, the Constitution explicitly says that Congress may prescribe qualifications over and above the minimum which the Constitution prescribes.[231] Moreover, it should also be recalled that Philippine legislative bodies are patterned after their American counterpart and that therefore American doctrine on the subject is not without application to the Philippine situation.

American jurisprudence on the subject points to the conclusion that the Constitution leaves the legislature "without power to *exclude* any member-elect who meets all the Constitution's requirements for membership."[232] This conclusion was arrived at by a historical analysis of early English and American colonial exclusion precedents, of the debates at the Philadelphia Convention, and of early post-ratification precedents.[233] The analysis concludes:

Had the intent of the Framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them."[234] As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agreement with this basic philosophy, the Convention adopted his suggestion limiting the power to expel. To allow essentially that same power to be exercised under the guise of judging qualifications, would be to ignore Madison's warning, borne out in the *Wilkes* case and some of Congress' own post-Civil War exclusion cases, against "vesting an improper and dangerous power in the Legislature."[235] Moreover, it would effectively nullify the Convention's decision to require a two-third vote for expulsion. Unquestionably, Congress has an interest is preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds.

"'Article VIII, Section 7(2).
"Powell v. McCormack, 395 U.S. 486,547 (1969). *See also* Maquera v. Bona, 15 SCRA 7 (1965), which deals with an attempt to add a property qualification.
"*Id.* at 522-547.
Elliot's Debates 257.
2 Farrand 249.754 THE 1987 CONSTITUTION

In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

For these reasons, we have concluded that Art. I, Section **5,** is at most a "textually demonstrable commitment" to Congress to judge only the qualifications expressly set forth in the Constitution. Therefore, the "textual commitment" formulation of the political question doctrine does not bar federal courts from adjudicating petitioners' claims.

Our Court, however, has decided not to follow the above American teaching. The right of Farinas to sit in the House of Representatives was challenged on the ground that his certificate of candidacy was invalid. He had failed to satisfy the statutory requirements for certificate of candidacy. Farinas had already been proclaimed winner and was actually holding office. Moreover, he had all the qualifications prescribed by Section 17. Was this an issue which could be decided by the House Electoral Tribunal? The Court ruled that it was:

. . . [AJrticle VI, Section 17 of the Constitution cannot be circumscribed lexically. The word "qualifications" cannot be read as qualified by the term "constitutional." *Ubi lex non distinguit noc nos distinguire debemos.* Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated. For firstly, the drafters of the fundamental law, in making no qualification in the use of a general word or expression, must have intended no distinction at all. Secondly, the courts could only distinguish where there are facts or circumstances showing that the lawgiver intended a distinction or qualification. In such a case, the courts would merely give effect to the lawgiver's intent.

It is submitted, however, that, although the Court's conclusion is correct, the issue here is not about qualifications. When the Constitution enumerates qualifications without a generic clause like "and such other qualifications which may be provided by law," the rule is that the qualifications are exclusive and may not be added to by Congress. Farinas had all the qualifications prescribed by Section 6. His problem, however, was failure to follow the requirements for a certificate