

- The following is an address of current interest and significance delivered by the Hon. Jose B. Laurel, Jr., Speaker of the House of Representatives of the Philippines, February 13, 1967.

## THE CONSTITUTIONAL CONVENTION AND CONGRESS IN THE PHILIPPINES

I am strongly in favor of the reexamination of our Constitution with a view to making it more responsive to present needs and reflective of our status as an independent country. And, unless we propose to consider only a few isolated changes, I feel that the task should be undertaken not by Congress but by a constitutional convention. As I said in a privileged speech almost twenty years ago, changing the Constitution by means of a constitutional convention would be more democratic than by mere congressional action. The reason is that it would give the people an opportunity to directly choose the delegates for the particular task of restudying the Constitution, and for this task only. Direct interference by those who, for the moment, are well entrenched by the political departments of

the government can be minimized if not avoided.

However, I cannot agree with the proposal to make senators and representatives *ex officio* delegates to the proposed convention. In my humble opinion this arrangement would be violative of the Constitution besides being politically unwise.

Article VI, Section 16 of the Constitution decrees *inter alia* that "no Senator or Member of the House of Representatives may hold any other office or employment in the Government without forfeiting his seat." To my mind, this provision is a sweeping prohibition against the concurrent holding by members of Congress of their seats both as legislators and as delegates to the constitutional convention.

There is a similar provision in the Constitution of the United States after which

our own was patterned, but it must be noted that ours is wider in scope and, therefore, stricter in its prohibition. The rule in the United States applies only to the holding of "any office" in the government but our own Constitution embraces not only offices but even mere employment. Consequently, none of us in the Legislature can be employed, in, say, even a temporary and clerical position in the government, much less an office, which is essentially permanent and discharges sovereign functions, without abandoning his seat in Congress.

I maintain that membership in the constitutional convention is an office of the highest order and, therefore, should come within the terms of Article VI, Section 16, of the Constitution.

A public office, according to Professor Mechem, is "the right, authority and duty created and conferred by law by which for a given period, either fixed by law or enduring at the pleasure of the creating power; an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit

of the public." According to Professor Sinco, in his standard work on Philippine Political Law, at p. 44 of its Eleventh Edition, a constitutional convention is "a part of the existing government" charged with the specific duty of "framing a constitution or revising the existing constitution, or formulating amendments to it."

I cannot understand how some people can seriously contend that the position of delegate to the Constitutional Convention is not an office in the government of the Republic of the Philippines. Conformably to Section 2 of the Revised Administrative Code, "functions of government are exercised" by it and the highest form of "political authority is made effective" through it, much more imperiously, in fact, than through the other departments. Doubtless, when the Constitution qualified the words "office or employment" with the phrase "in the Government," it meant merely to specify public as distinguished from private offices, such as those in the National Coconut Corporation, as announced by the Supreme Court in *Bacani v. National*

Coconut Corporation. It certainly did not mean to exclude from its scope membership in the Constitutional Convention, a public office of the most exalted kind.

Now, it is to be noted that the constitutional provision in question does not distinguish among the different kinds of offices, which means that all of them, without exception, are intended to be covered by the prohibition. *Ubi lex non distinguit nec non distinguere debemus.*

The suggestion that *per diems* be given to delegates who do not receive any salary from the government and none to those who do, would make the same position lucrative in some cases and honorary in others — a queer situation, indeed! But this would make no difference. It is well-settled that compensation is not an indispensable element of a public office and that a person holding a position in the public service may be a public officer even if he serves without compensation.

Let us not for a moment think that a *per diem* is not compensation simply because it is not paid by the month or by the year like a regular

salary. In fact, a *per diem* can even be more lucrative than a fixed salary.

Assuming that the positions which legislators will assume in the convention are not offices in the constitutional sense — and this I deny — they would still constitute employment in the sense of the Constitution and therefore within the constitutional prohibition. On this point, let me say that I do not agree with the view that employment is inferior to an office because the word employment is broad enough to cover the term office. Every office is an employment although not every employment is an office. In any event, looked at either as an office or as an employment, the participation of legislators in the constitutional convention while concurrently sitting as members of Congress would be violative of the fundamental law.

I realize that there are no precedents to guide us on this important question either here or in the United States. Neither our Constitution nor the Federal Constitution has been revised by means of a convention. In the long history of the United States, all amendments were proposed

by Congress and ratified by the state legislatures, except the twenty-first amendment, by which Prohibition was repealed, which was allowed to be ratified by state legislatures or state conventions. In the Philippines all five amendments — i.e., the 1939 amendments adopted pursuant to the Tydings-Kovalowski Act, the 1940 changes replacing the National Assembly with the Congress of the Philippines, shortening the President's term of office from 6 to 4 years but with one re-election, and creating the Commission on Elections, as well as the so-called Parity Amendment of 1947 — were proposed by congressional action and ratified in plebiscites.

This circumstance certainly complicates our problem and should warn us that we are treading on dangerous ground by insisting on giving members of Congress *ex officio* membership in the Constitutional Convention. What would happen if, in a proper case, our Supreme Court should declare that the members of the legislature who have taken the oath as delegates to the constitutional convention have auto-

matically forfeited their seats in Congress? Would this not have the effect of practically, if not completely, dissolving the legislative branch of our government? And who then would certify to the existence of vacancies in Congress to enable the President to call a special election to fill said vacancies? Who would provide the necessary funds for the holding of said election?

I am not unmindful of the recognized exception to this provision, which is, that members of Congress may hold another office or employment in the government without forfeiting their seats if the second position can be justified as in aid of their legislative functions. To be sure, a number of legislators have, without ceasing as such participated in international conferences or negotiations as representatives of the President of the Philippines or as members of such bodies as the National Economic Council and the Board of Regents of the University of the Philippines. Nevertheless, I believe that membership in a constitutional convention is highly incompatible with membership in the legislature, for only by

the widest stretch of the imagination can we consider the former as in aid of legislative duties. And neither can we say the membership in the constitutional convention is a mere extension of the congressional office for indeed, the framing or revision of the fundamental law is a sovereign function of the highest order and cannot in any sense be considered subordinate to the task of enacting ordinary legislation.

In fact, it is very doubtful whether, in the absence of express constitutional authority, Congress can propose amendments to our noble charter. Ordinary law-making power does not cover the constituent power to establish or institute government which is a function inherent, in the sovereign people. On the other hand, the constitutional convention, once convened, can overhaul the entire structure of the government, including the legislative department, subject, of course, to ratification by the people; and, while acting within the scope of its authority, it is not subject to the control of the Executive, to judicial review by the Supreme Court, or to the in-

terference of the legislature. Yet, direct legislative interference is exactly what would result if members of Congress were allowed to sit as *ex officio* delegates to the constitutional convention.

Furthermore, it should be recalled that under Article VI, Section 9, of the Constitution, Congress is required to meet in regular session on the fourth Monday of January each year, and herein lies another constitutional objection. For while it is true that the constitutional convention may be made to start its session during the congressional recess, there is absolutely no guaranty that it will be able to conclude its task before it meets in regular session the following year, not to speak of the possibility that Congress may be called into special session by the President. While it is true that only an irresponsible President will call a special session simply to embarrass the members of Congress, the urgent need for such session may arise while the convention is functioning. At any rate, the possibility is there. In such a case, congressmen and senators would be confronted with the dif-

difficult problem of having to choose between attending the sessions of Congress or the sessions of the constitutional convention. And if they should prefer the latter, the Congress would have to be immobilized for lack of quorum and it would be doubtful if they could be arrested and compelled to attend the sessions of Congress if they should be attending the deliberations of the constitutional convention which is expected to be endowed with a similar authority to compel attendance of its members.

A final legal point is that under Article XV of the Constitution Congress is allowed to amend the fundamental law either by congressional action only or by calling a constitutional convention. If it is our desire to propose such amendments to the Constitution as we may choose, we may do so, but this should be done by us directly and without resorting to the alternative of holding a convention. The use of the disjunctive *or* rules out the adoption of a third or any other additional method, like the proposal to amend the Constitution

through a convention with Congress as an *ex officio* adjunct thereof. There is certainly no reason why we should depart from the traditional mode of constituting a convention and undertake to authorize what the Constitution does not intend or contemplate. In fact, a study of the constitution of various states in the United States will show that, as in our case and that of the Federal Constitution, the memberships of their respective constitutional conventions do not include the members of their legislatures, even as *ex officio* delegates.

I am much impressed by the argument that if Congress had full legal authority to specify the membership of the convention, then it could empower even private citizens, such as the presidents of civic organizations, to sit as delegates. If we are to agree with this hypothesis, then we could also legally provide that *only* members of Congress shall sit as delegates to the convention, thereby nullifying the alternative methods of amending our Constitution as indicated in Article XV. This would

also run counter to the doctrine emphasized by Judge Jameson that the legislature itself may not name the delegates to constitute the convention, for it might name a committee of its own members or some other small body which is likely to be "subservient to the power which created it." Furthermore, such a scheme would militate against the philosophy of this article, which envisions a constitutional convention to be composed of delegates elected by the people for the specific purpose of amending the Constitution. There is no better way of ascertaining and reflecting the popular will than through popular election.

From the political standpoint, there are also a number of objections worthy of our attention.

First of all, it should be noted that if we were to add to the regular delegates of the convention the 128 members of the legislature, the convention would have a total membership of 326 under the proposal, if we are to elect two regular delegates per congressional district. And if we should include the

surviving delegates to the Constitutional Convention of 1935, as well as the eleven justices of the Supreme Court, as suggested in certain quarters, we would have 115 additional members, further increasing the membership of the new convention to 431, which is certainly more than twice the number of delegates who constituted the original convention. The result would be an extremely cumbersome body that, more likely than not, would be unable to perform its vital task systematically and with dispatch.

Finally, the important point should never be overlooked that if the election of delegates is to be held this year, and all the members of the legislature are included as *ex officio* members of the convention, all the congressmen and no less than sixteen members of the Senate will have infiltrated the Convention without a clear and fresh mandate from the electorate to participate in the task of changing the Constitution. This is so because only eight members of the Senate will be chosen with local officials this coming

November. And if the suggestion to include the surviving delegates of the original constitutional convention and the eleven Justices of the Supreme Court is accepted, then we shall have no less than 131 members in the proposed constitutional convention who shall be without any direct authority from the people to revise the Constitution. And, if only one delegate per congressional district is elected, these will be outnumbered by *ex-officio* members.

As pointed out in *In re Opinion* to the Governor, 178 A. 433, in answer to the question, among others, of whether or not the legislature could provide that the general officers of the state shall by virtue of their offices be members of the constitutional convention:

"A constitutional convention is an assembly of the people themselves acting through their duly elected delegates. The delegates in such an assembly must therefore come from the people who choose them *for this high purpose and this purpose alone*. They cannot be im-

posed upon the convention by any other authority. *Neither the Legislative nor any other department of the government has the power to select delegates to such a convention.* The delegates elected by and from the people, and only such delegates, may and of right have either a voice or a vote therein.

"xxx No one not a delegate, no matter how exalted his station in the existing government can be assured either a voice or a vote in such a convention *unless he comes there with a commission from the people as their delegate*, although the convention itself may if it please invite him to address it or give it counsel, in which case he will be in the convention by invitation and not by *virtue of his office.*"

In view of all this, I am personally of the conviction that Members of the Congress of the Philippines should not be allowed to sit as *ex-officio* delegates to the proposed constitutional convention. Nevertheless, if it is the feeling of Congress that the membership of legis-



lators is essential and in order not to deprive the convention of the services of capable Members of Congress, then I suggest that we submit the question to the people, giving them the privilege to determine the issue for themselves in their sovereign capacity. This we can effect by means of a proposed amendment I submitted two years ago rewording Article VI, Section 16, of the Constitution so as to make it read as follows: "No senator or member of the House of Representatives may hold employment in the government, *except as member of the constitutional convention that may be called pursuant to Article XV, without forfeiting his seat xxx.*" The proposal can then be approved by three-fourths of all the members of the two Houses of Congress voting separately and subsequently submitted for ratification by the people preferably in the regular election to be held in November this year.

In this way, we shall be able to overcome constitu-

tional objections if the people ratify the said amendment regardless of the substantive merits thereof or the arguments that have been raised against it. The important thing is that the people's will, be it right or wrong, shall have been expressed freely and categorically on the question of the dual membership of legislators in Congress and the constitutional convention.

In any event, I should like to voice the hope that if and when this constitutional convention is finally called, its members shall approach their solemn responsibility with the highest sense of duty and patriotism and without regard to partisan consideration or personal ambitions. Only thus, I feel, can they make of our Constitution the fulfillment and the flowering of liberty for all Filipinos, not only now or a hundred years from now, but for all eternity. — *By Speaker Jose B. Laurel, Jr. in the Manila Bulletin, February 15, 1967.*