

It appears that the editors of a certain newspaper in Manilla were prosecuted for criminal libel and convicted. The local court having denied their demand for a trial by jury, an appeal was taken on that ground to the Supreme Court of the United States, and the latter tribunal held that as this right had not been expressly granted to the inhabitants of the Philippines by Congressional legislation the court of first instance had ruled correctly on the demand. The majority of the court consisted of Fuller, C.J., and Brewer, Peckham and Holmes, JJ. Mr. Justice Harlan, however, dissented. In the course of his very able dissenting opinion the latter considers that the judgment of the Supreme Court simply amounts to "an amendment of the Constitution by judicial action." He further says: "As for the commission of the crime of murder, a Filipino, subject to the sovereign power of the United States, may be hanged by the authority of the United States. The suggestion that he may not, of right, appeal for his protection to the jury provisions of the constitution is utterly revolting to my mind and can never receive my sanction. The constitution declares expressly that 'the trial of all crimes, except in cases of impeachment, shall be by jury.' It is now adjudged that that provision is not fundamental in respect of ten millions of human beings over whom the United States may exercise full jurisdiction. Indeed, it is adjudged, in effect, that the above clause, in its application to this case, is to be construed as if it read: 'The trial of all crimes, except in cases of impeachment, and except where Filipinos are concerned, shall be by jury.' Such a mode of constitution interpretation plays havoc with the old fashioned ideas of the fathers."

Judge Harlan's views commend themselves to our reason. The opinion of the majority of the court in this case if pressed to its logical boundaries would mean that Congress must expressly legislate in behalf of the Filipinos the whole body of rights and remedies comprising the liberty of the subject. Such a conclusion would lead to a juridical *impasse* until Congress could be persuaded that this conclusion was a correct one, and found time to enact a Filipino code with all the necessary infinitude of detail. Again, we ask, if a man may be indicted for a common law offence in the Philippines without Congressional authorization therefor, why in the name of common sense should he be denied a fundamental common law method of trial upon such indictment?