

WHEN PARITY ENDS

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There has been some agitation lately to terminate the parity agreement even before 1974 or, at least, not to permit its extension after its expiration on July 3, 1974.

The big question that is often asked in the light of this agitation is: What will be the effect of the termination of the parity agreement upon rights and privileges acquired and enjoyed by Americans under such agreement?

WAR DAMAGE

A clearer picture of the problem may, perhaps, be attained by a review of the laws and agreements referring to parity.

On April 30, 1946, the U.S. Congress enacted two sister pieces of legislation: (1) Public Law 370, known as the 'Philippine Rehabilitation Act of 1946' or the War Damage Law, and (2) Public Law 371, cited as the 'Philippine Trade Act of 1946.'

The first Act, providing for payment of war damages in the Philippines, was obviously meant to appear as a fulfillment of the promises made to the Filipino people by President Franklin Delano Roosevelt during the last war.

He told the Filipinos to bear the wounds and the ravages of war, because America would give us fair and just compensation for all damages we might suffer. We were told that every nipa hut, every tree, every carabao, and every bit of property destroyed would be replaced or paid for.

But when the War Damage Law was enacted by the U.S. Congress, it contained the following provision:

'No payments under...this Act in excess of \$500 shall be made until an executive agreement shall have been entered into between the

President of the United States and the President of the Philippines, and such agreement shall become effective according to its terms, providing for trade relations between the United States and Philippines x x x.'

PARITY CLAUSE

The Executive Agreement upon which the payment of war damages in excess of \$500 was made to depend by Public Law 370, is that provided for in its sister law, Public Law 371 or the 'Philippine Trade Act of 1946'.

This Act provides that in the executive agreement to be entered into by the Presidents of the United States and the Philippines, it shall be provided that —

'The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by United States citizens.' (Sec. 341, Public Law 371).

This is the parity clause. And the same Public Law 371 provides further —

'The President of the United States is not authorized . . . to enter into such executive agreement unless in the agreement the Government of the Philippines agrees x x x That the Government of the Philippines will promptly take such steps as are necessary to secure the amendment of the Constitution of the Philippines so as to permit the taking effect as laws of the Philippines of such part of the provisions of Section 341 as is in conflict with such Constitution before such amendment.'

AMENDMENT

It is quite clear from these provisions of laws enacted by the U.S. Congress, that amendment of our Constitution

in order to give American citizens and corporations parity rights was imposed not only as a condition precedent to payment of war damages in excess of \$500, but also as a condition precedent to the signing of the executive agreement which would govern the trade relations between the Philippines and the United States from 1946 to 1974.

Because we were prostrate from the war, and because we needed help to rise from the ashes of that armed conflagration, we submitted to the humiliation of amending our Constitution not out of our own spontaneous desire, but as a condition imposed for a chance to rehabilitate our people and our country from the effects of a war that was not our making.

So our Congress passed Commonwealth Act No. 733 on July 3, 1946 accepting the executive agreement which contained the parity clause, and later, we approved the parity amendment of the Constitution, which would be in force until July 3, 1974.

EXTENSION

The adoption of parity was very costly to the Filipinos. In order to insure its approval by the Congress, some members who were elected to the Senate and to the House of Representatives were not allowed to take their seats. Among them was Luis Taruc, who later became the 'Supremo' or the head of the Huk movement.

To my mind, the necessity of insuring approval of the parity amendment in the Congress, requiring the elimination of Taruc and company from the House of Representatives, contributed greatly to the Huk insurgency.

Having been driven from the legislative body of this country, they went underground and the Huk rebellion began. The heavy cost we paid for parity cannot be underestimated.

Later on, however, parity, which was originally limited to natural resources and public utilities, was still extended to all forms of business activity in the Philippines. This was the 'pound of flesh' exacted by the United States for certain trade benefits.

This was effected by the so-called Laurel-Langley agreement, which was a revision of the executive agreement of 1946, authorized by Republic Act No. 1355, approved on June 18, 1955.

TERMINATION

On July 3, 1974, or about eight years from now, the parity agreement will end by its own terms.

However, there is a provision in the revised agreement, or Laurel-Langley agreement, that either the Philippines or the United States may terminate the agreement upon not less than five years' notice to the other.

The agitation against the further continuation of parity is impelled by the conviction among many Filipinos that it works against the national interest.

Among Americans, there are also many who do not wish parity to continue. In the Philippine-American Assembly held in Davao City last February, for instance, the American delegates said that parity has caused more irritation to both countries than it has contributed substantial benefits.

It can be assumed, therefore, that parity will end on July 3, 1974, or even sooner if our Government gives the five years' notice for unilateral termination.

TRADE ACTIVITY

The termination of the parity agreement will not affect American business or activities which are not reserved either by the Constitution or the laws of the Philippines for Filipinos. They will undoubtedly continue.

With respect to business activities which have been Filipinized by law, such as the retail trade, the right of Americans to engage therein will have to end with the parity agreement or the Laurel-Langley agreement.

The right to engage in the retail trade is dependent upon licenses or permits. No such licenses or permits or renewals thereof can legally be issued to Americans when the Laurel-Langley agreement is no longer in force.

CONSTITUTIONAL

A more difficult problem arises with regard to rights and privileges acquired by Americans pursuant to the parity amendment in the Constitution.

Some years ago, I made an off-hand statement on this problem as follows:

‘1. In the exploitation of natural resources, a distinction should be made between those who have acquired a vested right and those who have been granted merely a privilege:

‘(a) Those who have acquired a vested interest, such as ownership of land from the the Public domain acquired under the provisions of the public land law, shall continue to enjoy their acquired right.

‘(b) But those who are merely holding a privilege or concession, such as timber concessions, without a period fixed by law or contract, must give up such privilege upon the termination of the Laurel-Langley Agreement.

‘(c) Those holding a privilege or right for a period by law or contract, such as a lease of public land, shall enjoy the privilege or right until the end of the period, even after the expiration of the Laurel-Langley agreement.

‘2. In the operation of public utilities under certificates of public convenience with a fixed period, the operator should be allowed to continue with his business until the expiration of the period. After that, no new certificate should be granted after the Laurel-Langely agreement has ceased to be in force.’

Recently, however, I have made a more serious legal study of the problem, and it is the result of this study that I would like to present to you today.

FILIPINISM

As a background, we must consider the nationalistic or Filipinistic nature of our Constitution. Note its preamble:

'The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, *conserve and develop the patrimony of the nation*, and secure to themselves and *their posterity* the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution.'

Article XIII, Section 1, after providing that all natural resources belong to the state, continues:

'x x x and their disposition, exploitation, development or utilization *shall be limited to citizens of the Philippines*, or to corporation or associations at least 60% of the capital of which is owned by such citizens, x x x'

Under Section 5 of the same Article, even private agricultural lands *cannot be transferred or assigned to aliens or foreigners*, except by hereditary succession.

And under Article XIV, Section 8, 'no franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except to *citizens of the Philippines* or to corporations or entities organized under the laws of the Philippines, 60% of the capital of which is owned by citizens of the Philippines x x x'

EXCEPTION

The grant of equal rights to Americans in the matter of natural resources and public utilities, therefore, constitutes an exception to and a departure from the highly nationalistic character of the Constitution.

As an exception, it must be strictly construed, and should not be considered as going beyond what it expressly provides.

The parity amendment, as an Ordinance appended to the Constitution, provides:

'Notwithstanding the provisions of Section one, Article Thirteen, and Section eight, Article Fourteen of the foregoing Constitution, (quoted above) during the effectivity of the Executive

Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

TEMPORARY

From the express and clear terms of this amendment, it is obvious that the parity rights granted or recognized by it are exceptional (Note the word *Notwithstanding* the nationalistic provisions of the Constitution) and are of a temporary character.

They are temporary, because by the terms of parity amendment, they subsist only 'during the effectivity of the Executive Agreement' entered into between the Philippines and American Presidents, now known as the Laurel-Langley Agreement.

The temporary character of these parity rights is further emphasized by the fact that the parity amendment was introduced into the body of the Constitution but was merely appended as an Ordinance thereto.

By reason of the exceptional and temporary character of parity rights, the inevitable conclusion is that upon the removal of the Ordinance from the Constitution when the Laurel-Langley Agreement ends, parity rights must also end.

These rights are in conflict with the Constitution. They draw artificial life from the Ordinance. Once this Ordinance is removed, the rights dependent upon it must go with it to its legal death.

Every right or privilege acquired under such Ordinance must be legally subject to the term or period stated therein — ‘during the effectivity of the Executive Agreement x x x.’

Once the Executive Agreement ceases, either by expiration on July 3, 1974, or by abrogation after five years’ notice, all parity rights must also cease. It is not even necessary to amend the Constitution so as to repeal the Ordinance. Legally, the Ordinance will lose its force and effect upon the termination of the Executive Agreement.

‘VESTED RIGHTS’

What about so-called ‘vested rights’? If an American, for instance, has acquired a piece of land from the public domain legally while the parity amendment is in force, does he not acquire a ‘vested right’ — the right of ownership — that can not be impaired by the termination of the parity agreement?

I submit that there is no such ‘vested rights’ that can outlive the very source of its existence — the parity agreement.

The Ordinance or parity amendment to the Constitution makes no distinction between rights of ownership or leases or concessions and privileges. It makes clear that ‘the *exploitation, development, and utilization* of all natural resources shall be open to Americans only ‘during the effectivity of the Executive Agreement.’

After parity has ceased, the provisions of the Constitution limiting the disposition, exploitation, development, and utilization of natural resources to Filipinos, will regain supremacy without exception. Against such supremacy, no vested rights can stand which cannot find protection in the Constitution itself.

NO PROTECTION

There are certain provisions protecting vested property rights of Americans, but they do not cover rights under parity.

Under Article XVII, Section 1, of the Constitution —

‘Upon the proclamation of the President of the United States recognizing the independence of the Philippines —

‘(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and *all existing* property rights of citizens or corporations of the U.S. shall be acknowledged, respected, safeguarded to the same extent as property rights of citizens of the Philippines.’

Under Article XIII, Section 1, which limits the disposition, exploitation, development and utilization of natural resources to Filipinos, the Constitution adds:

‘x x x x subject to *any existing* right, grant, lease, or concession at the time of inauguration of the government established under this Constitution.’ Treaty of General Relations between the Philippines and the United States, signed on July 4, 1946, Article VI, provides that —

‘x x x *all existing* property rights of citizens and corporations of the United States of America in the Republic of the Philippines x x x shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens and corporations of the Republic of the Philippines. x x x.’

DUE PROCESS

All of these protective provisions are expressly limited to *rights existing* at the time when the Constitution came into force or when the Philippines became independent. They do not and can not cover rights *subsequently acquired* by Americans under the parity agreement.

The constitutional provision that no person shall be

deprived of property without due process of law cannot apply. Property must be recognized by the Constitution to merit the protection of the *due process* clause. But where the property right asserted conflicts with the Constitution itself, it cannot stand and cannot invoke the protection of the very Constitution that it violates.

If the due process clause could protect an American's right to property that would be violative of the Constitution itself, then the Constitution and Treaty of General Relations would not have found it necessary to include the provisions I have quoted protecting existing rights. Both the present Constitution and the Jones Law that preceded it contain that *due process* clause.

NEW TREATY

Rights acquired under the parity agreement, therefore, may continue only if a new treaty is entered into between the Philippines and the United States upon the termination of such agreement, saving these rights from legal extinction

The Americans who attended the Philippine-American Assembly in Davao City last February must have had such a 'saving clause' in mind when they urged that upon the termination of the parity agreement, a Treaty of Friendship, Commerce and Navigation be entered into between the Philippines and the United States.

Whether such a 'saving clause' in a new treaty would be desirable or wise, presents a different question which I shall not discuss today.