

# THE PARITY AMENDMENTS

*J. C. Orendain*

1.0 *Vested rights of Americans.* The Parity Amendment appended to the Philippine Constitution becomes a live issue as 1974, when the Parity Agreement ends, is drawing near. The present feeling is that neither the Filipinos nor the Americans are interested in prolonging this part of the Philippine Constitution.

It is stated that it was wrong to have Parity appended to the Philippine Constitution in the beginning. Most people think so, even President Manuel Roxas said so, but it was necessary to save the country and the people from the ravages of the Second World War.

Senate President Arturo Tolentino said: "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 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 of our own making."

The war was not our own war, but the Filipino people are a grateful people and seeing that their American mentors and later on, friends, treated them better than other nations that colonized Asia, they went to war on the basis of friendship, of coming to the rescue of friends in need. There are also many who went to war, believing the conditions given by President Franklin Delano Roosevelt over his radio talks, that were broadcast in the Philippines, in spite of the prohibition imposed by the Japanese, that America would compensate the Philippines to the last carabao that the people would lose in the war. This could be part of a selfish reason. All in all the joining of the Filipinos could be part of war hysteria, could be part of enthusiasm, or could be part of human service to help the other fellow fight for his right.

When the Parity Amendment was signed by both the President of the United States of America and the President of the Philippines, it was approved by the Philippine Congress, and was voted in a plebiscite by the Filipino people. The plebiscite was overwhelming in favor of the Parity Amendment. This could be due partly to the eloquence of President Roxas, but due mostly to the feeling of friendship toward the Americans by the Filipinos.

Those who saw the Americans march into Manila during the war of liberation, can testify that the Filipino guerrillas — the people as a whole — fought the fight of the GIs for them. The Filipinos could not stomach any dictatorship. Japan came to the Philippines drunk with her successes on the fields of battle and the Japanese soldiers acting like savages, were insolent.

When General Douglas MacArthur asked President Roxas if Japanese observers could come to observe the FAO Conference, in March 1948, in Baguio, President Roxas answered General MacArthur that he would not recommend it because the Japanese killed in cold blood two Igorots in the market place in Baguio, one beheaded with a samurai sword and another killed with a machine gun. The truth was that the Igorots hung a Japanese soldier they caught, on a tree at Naguilian Road and the body of that Japanese disappeared little by little because of wild animals and birds. No one would dare take the body down for fear that the ones who hanged it would go after them.

The love established by the war between the Americans and the Filipinos has virtually disappeared. Younger people who were not in contact with Americans, have taken the places of older people and different views are now apparent. Old American friends have not noticed that the children born in 1945 have now reached their majority and they never knew the camaraderie between the Americans and the Filipinos during the war. To them Bataan and Corregidor are war stories just as the epic stories of Leonidas at Thermopylae or George Washington at Valley Forge.

Older people — both Americans and Filipinos — have

to renew this friendship in a stronger way because the world today is in a ferment and a few Peace Corps Volunteers cannot stave off the infiltration of communism in schools, offices and labor unions.

General Douglas MacArthur was a hero who became a legend in the Philippines. His sentimental journey here a few years ago showed the feeling of the Filipino people toward that great American friend. There are today many MacArthurs — first names of Filipino boys — just as many Americans gave their boys the names of war heroes. But MacArthur as symbol of Filipino-American friendship is dead. And friendship can die soon enough unless continually stirred and refuelled, like the camp fires that have to be fed right along.

Now a new generation is taking the leadership, and a new kind of friendship has to be established.

Still the new era, the age of modern views, cannot tear away the laws that both Americans and Filipinos agreed to be appended to the Constitution in 1946. With the past intimate camaraderie as background, it would not be difficult to re-establish the old close relationship. It must, however be established upon equality. The old idea of color differences of skin must altogether be forgotten. What is fair and handsome to the white might not strike the brown to be true. After all nothing can overcome the old Jeffersonian philosophy that all men are created equal.

The big bone of contention in the Parity Agreement at present is vested rights of the Americans who have acquired property during the time of Parity. Do the Americans have vested rights?

Senate President Arturo Tolentino and some other legal luminaries do not think so. On the other hand, some of the top constitutional lawyers believe that the Americans have established vested rights on the property that they acquired from July 4, 1946 when Parity was appended to the Philippine Constitution, to July 3, 1974 when Parity rights end.

Rights of Americans to engage in retail trade will be curtailed. This will come unless a treaty similar to the

Laurel-Langley agreement with specific provisions may be covenanted between the Philippine Republic and the United States of America.

This paper, aside from giving a background to American-Philippine friendship, will deal mostly on the vested rights of Americans. We are leaving aside trade agreement. What we propose to discuss here is whether the Americans would have vested rights to the fruits of their labor.

Those who do not believe that Americans have vested rights on the properties acquired during Parity give these as reasons:

1. Filipinism — the Philippine Constitution is to defend the rights and conserve and develop the patrimony of the nation.
2. Exception — the grant of equal rights to Americans in the matter of natural resources and public utilities constitutes an exception and a departure from the highly nationalistic character of the Constitution.
3. Temporary — Mr. Tolentino calls attention to the word, "Notwithstanding," and the terms of parity amendment that subsist only "during the effectivity of the Executive Agreement" entered into by both presidents of America and the Philippines.
4. There is no Vested Rights — After parity has ceased, the provisions of the Constitution limiting the disposition, exploitation, development and utilization of all natural resources, shall be supreme and no vested rights can stand which cannot find protection in the Constitution itself.
5. No protection — There are certain provisions protecting vested property rights of the Americans, but they do not cover rights under parity.
6. Due process — Protective rights provisions are expressly limited to rights existing at the time when the Constitution came into force.

To get the correct perspective regarding this discussion let us examine carefully the Parity Provisions of the Constitution.

## ORDINANCE APPENDED TO THE CONSTITUTION

Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, 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 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 enterprises 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

Answering the five arguments stated above we shall take them one by one, in order to clarify the issues

1. *Filipinism* — This is to be expected. Since a constitution is the fundamental law of the land, it is expected that the Philippine Constitution was meant to protect Filipino interests and defend Philippine patrimony and Filipino rights. But we appended a Parity Agreement to our Constitution by the will of our President, our Congress and our people voting in a plebiscite. Everyone who was qualified had a vote, whether he was in favor or against Parity. The pro-Parity voters won. Because we are a democracy, we are a people who believe in the rule of the majority, even our Filipinism is affected as we had decided to temporarily suspend the economic provisions embodied in Section One of Article XIII, and Section Eight in Article XIV of our Constitution. Temporary, yes, but

that we gladly, as it appears, shelved our Filipinism for a while, to favor our friends, the Americans, is apparent. Whether the Americans appreciated it or not, we showed the world that we are a generous and friendly people.

2 & 3. *Exception and Temporary* — These two arguments can be bundled together as it is agreed by virtue of the Parity Amendment that Parity is an exception and that it is temporary. Besides we have discussed these points above. Parity can only be enjoyed during the time provided for it to be in vigor — that is from July 4, 1946 to July 3, 1974. But no attorney of good standing can accept the interpretations of the law that what has been acquired and/or purchased legally by a person at the time when the law so permitted, will have to be resold, liquidated or taken back from him, even with compensation, unless it is his own will to do so.

There is talk that our Congress could be mean about it and pass laws that would harass the Americans. There may be some mean persons in our Congress, just as there are mean persons in any parliament of any nation, but we cannot generalize. At any rate, Christian democratic nations can be trusted to act with fairness.

It is true that the acquisition of land and other natural resources could be done only at a certain time expressed in the law, but the law is clear that "*the disposition, exploitation, development and utilization,*" of all agricultural and natural resources, "*shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises 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 corporation or associations owned or controlled by citizens of the Philippines*"

It is clear that the time the government of the Philippines, would permit the owner of the property acquired to hold the said property as his own, is not limited. It left the right of those who acquired property under the Parity Amendment at par, or in the same category as the rights held by Filipino citizens. It will be noted that with

the Parity Agreement, our Constitution elevated the rights of the Americans to the level of those of a Filipino citizen during the life of Parity. What has been purchased by Americans under absolute deed can not be changed, unless the Americans would relinquish the rights they have acquired.

Much has been said about the word, "Notwithstanding," in the Parity Amendment. *Notwithstanding* means, in spite of the provisions previously placed in the Constitution (Art. XIII and Art. XIV), the rights given by the Parity Amendment to citizens of the United States during the effectivity of the Executive Agreement, will stand and will be respected. *Notwithstanding* does not become an exception, it is an assertion. It may become an exception after the effectivity of the Executive Agreement expires, because by then, it would have no life.

While Parity Amendment is an exception and temporarily appended to the Constitution, the language of the Amendment will naturally be observed. And since the language gives the permanence of acquisition in the same manner as given to any Filipino citizen it will have to be respected by our Constitution that contains it.

4. *There is no "Vested Rights"* — This is highly debatable. The language is clear that the vested rights will be ruled in accordance with what vested right the Constitution gives the Filipino citizen.

When a Filipino citizen buys a lot or a piece of land, the contract usually, is *Absolute Deed of Sale*. Vested rights is established right. Citizens of other countries cannot buy land in the Philippines, only Filipinos and Americans. The American is given the right of a Filipino citizen by virtue of the Parity Agreement.

Americans have opened business, have purchased lands, have exploited mineral resources of the Philippines. We believe with Senate President Tolentino that all of these will be stopped after the effectivity of the executive agreement as stated in the Parity Amendment, but what will happen to their rights to the property acquired and marked as profit or gain?

We submit that the operation of public utilities will

have to stop. But the ownership of the properties that the Americans bought, we also submit, that the Americans have established vested rights on them just as much as any Filipino citizens have established vested rights granted them by law.

The law is clear that an American citizen holds his *property "in the same manner as to, and under the same conditions imposed upon citizens of the Philippines...."*

With these provisions which elevate the rights of the Americans to the rights of the Filipinos and make them equal: "*in the same manner and the same condition imposed upon citizens of the Philippines.....*" it can be said with certainty that the Americans under the Parity Amendment have the constitutional freedom that the Filipinos have.

Mrs. Justice Story has well shown that "constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely guaranteed, assured, and guarded; in one's liberties as a man and a citizen (his right to vote, his right to hold office) his right to worship God according to the dictates of his conscience, his equality with all others who are his fellow citizens; all these guarded and protected and not held at the mercy and discretion of any one man or any popular majority. (People v. Hurlbut, 24 Mich, 44, 106. 108; Words and Phrases 8-A. p. 457.)

The words quoted above do not make an American a full-fledged Filipino citizen, but certainly he has all the civil rights (minus the political rights) granted to Filipinos. His civil rights are full, in the same manner and the same condition imposed upon the citizens of the Philippines. He would then be unmolested in his right to buy, sell and enjoy property, and generally, to seek happiness in his own way.

Filipino political leaders have the rights to agitate just as much as the American leaders. There are Americans in the U.S. Congress who have been careless with their language. This is their own privilege. But there are also Filipinos in the Philippine Congress who could be as



insolent. This attitude just brands insolence as a disease and an insolent man as not normal.

As a Filipino, I would like to feel the same way as Mr. Tolentino, but as a lawyer, I contend that the Americans have established their vested rights on the property that they have established title on. Our Supreme Court has consistently held that "where the meaning of a constitutional provision is clear, a contemporaneous or practical executive interpretation will not be allowed to distort or in any way change its natural meaning." (Tañada and Macapagal vs. Cuenco, L-10520, Feb. 28, 1957.)

We are in sympathy with those who hold that vested rights will end when the Parity Amendment becomes obsolete on July 3, 1974. At the same time we have to be fair and dispense justice just as we ourselves seek justice. We have to honor our agreement whatever it is, just as Rizal told Don Pedro Roxas in Singapore: "If the Spaniards will break their word, it is for them to decide, but the word of a Filipino is a vow."

5. *No Protection* — Parity is temporary. No one can question this. But that there is protection is clear. While Parity Amendment is in vigor, it carries the same strength as any portion of the Constitution and the Philippine Constitution is duty bound to protect those who obtained rights under it when it was effective as provided in the Amendment. The right established therein is and shall be rights protected by the Constitution. As the language is clear that the Americans are on equal rights with the Filipinos while the Amendment is in effect, then the Americans have established vested rights.

To say that the Americans have established no vested rights while the Parity Amendments is in effect, will be tantamount to saying that the Filipinos who bought property has not established vested rights. This would make the Filipino look ridiculous. If he cannot establish vested rights in his own country, where else could he establish this constitutional rights as provided in the Bill of Rights, Section 1, (1) "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

6. *Due Process of Law.* — This brings us to the *Due Process* provisions. Opponents of the Parity Amendment wish us to understand that protective rights provisions are expressly limited to rights existing at the time when the Constitution came into force.

Due process of law to the layman sounds like a word in the crossword puzzle. It is, however, defined as a general law which hears before it condemns; which proceeds upon inquiry, and render judgment only after trial.

In this discussion, due process of law, is a law based on fundamental and inherent principle of justice. "It forbids any deprivation of life, liberty or property, and secures equal protection to all, under like circumstances, in the enjoyment of their right; and in the administration of criminal justice requires that no different or higher punishment shall be imposed on one than is imposed on all for like offenses; but it was not designed to interfere with the power of the state to protect the lives, liberty and property of its citizens, and to promote health, peace, morals, education and good order. (136 U.S. 436.)"

The Philippines in the case of Parity Amendment, has given the Americans the same right to have and to hold with equal rights as the Filipino citizens. While the duration of the Amendment is limited, the duration of the rights over life, liberty or property, will be protected by the Philippine Constitution just as it would protect the rights of the Filipinos. As long as property rights acquired in the same manner as a Filipino citizen has acquired his rights under the law, the Constitution will protect these rights under the due process provision.

We gave in our Constitution the same rights to the Americans. Although temporary, while it was effective, it had the strength and vigor of the Filipino right, and the law of the land will recognize all legal acquisitions under that right, and cannot deny the Americans their vested rights to the properties they have acquired.