

# HISTORICAL TRANSCENDENCE: THE SIGNIFICANCE OF THE BILL OF RIGHTS OF THE MALOLOS CONSTITUTION

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## I. INTRODUCTION

On February 6, 1899, the United States Senate ratified the Treaty of Paris, an event significant in Philippine history because it officially marked the beginning of American occupation. Whether or not the United States had a legitimate claim to Philippine territory is beside the point; what is certain is that Spain had relinquished its claim over the Philippines, and that within the next year a strong American government would be established that would remain in power for almost half a century.

For Philippine legal scholars, this date is important because it is said to have begun the entry of constitutionalism as a concept in Philippine law. According to Bernas, for example, constitutional history, "in the sense of British and American constitutional history," did not exist in the Philippines before the arrival of the Americans.<sup>1</sup> Bernas claims that there was no constitutional history prior to that, because "Spanish constitutional guarantees of civil and political rights were not introduced in the Philippines," and because "there was no opportunity for an indigenous evolution of basic protections against oppression by officialdom."<sup>2</sup> Thus, in his commentary on

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<sup>1</sup> JOAQUIN BERNAS, A HISTORICAL AND JURIDICAL STUDY OF THE PHILIPPINE BILL OF RIGHTS 1 (1971) (hereafter BERNAS I).

<sup>2</sup> *Id.*

the 1987 Constitution, Bernas observes that the Philippine concept of constitutionalism started as a transplant from American soil,<sup>3</sup> dating back to the ratification of the Treaty of Paris, and thereafter growing from a series of organic documents enacted by the United States Government.<sup>4</sup> Similarly, Sinco observes that in the Philippines, the fundamental principles of political law are ultimately derived from American jurisprudence.<sup>5</sup> He goes on to claim that

[c]onstitutionalism was but a vague concept to the Filipinos for over three hundred years during which the Philippines was under the sovereignty of Spain. The notion of a constitution as an instrument that limits governmental authority and establishes a rule of law for all, the governor and the subject, the public official and the private individual, was not comprehended in theory and in practice. The legal milestone that marked its beginnings was the Treaty of Paris which terminated the war between the United States and Spain.<sup>6</sup>

This, he says, was the "legal starting point of Philippine constitutional development which reached full maturity with the adoption of the Constitution of the Philippines and the declaration of Philippine Independence on July 4, 1946."<sup>7</sup>

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<sup>3</sup> JOAQUIN BERNAS, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* xxxiv (1996) (hereafter *BERNAS II*).

<sup>4</sup> *Id.* at xxxv.

<sup>5</sup> VICENTE SINCO, *PHILIPPINE POLITICAL LAW* 2 (1962). He further observes that "[t]his condition was the inevitable outcome of the establishment of American rule in the Philippines. When Spain, by the Treaty of Paris ... ceded the Philippines to the United States, the Spanish political laws that were then enforced were automatically displaced by those of the United States. That substitution was the necessary result of the application of a general rule of public law observed by the United States: That when a state acquired territory, whether by treaty or by any other method, it may only hold such in accordance with its own political or constitutional laws. It is said that a contrary rule would legally mean impairment of the rights of sovereignty of the succeeding state. Thus, when the United States acquired a territory from another state, the laws of that territory which are in conflict with American constitutional rules, such as laws providing for an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, automatically cease to have any binding force." *Id.* at 3.

<sup>6</sup> *Id.* at 78.

<sup>7</sup> *Id.*

This paper examines a document that hitherto has been all but ignored by constitutional experts: the Malolos Constitution, arguably the most significant achievement of Aguinaldo's ill-fated Revolutionary Government. While constitutional experts discuss this document, it is invariably dismissed as a mere historical artifact, with little or no value in terms of Philippine constitutional tradition.

As this year marks the centennial of Philippine independence, it is of value to unearth the Malolos Constitution and to re-examine its provisions to search for any possible contribution to Philippine constitutional history. This paper examines the Malolos Constitution, not merely as a bygone relic of a short-lived government, but in terms of its significance in light of future Philippine constitutions. Specifically, it focuses on the bill of rights, seeking to understand these rights not merely in terms of contextual rootedness, but also in terms of their more lasting, transcendent significance. This paper argues that the articulation of rights by the Malolos Congress is significant because it indicates that the same philosophical underpinnings motivated the formulation of the Malolos Constitution and succeeding Philippine constitutions. Whereas extensive civil and political rights for Filipinos may not have been granted under the Spanish regime, the Filipinos understood the importance of guaranteeing fundamental liberties for all who resided in the Philippines, and of thereby placing limits on the government's exercise of power. By focusing on the bill of rights, this paper hopes to show that the ideas present in the current Philippine constitution pre-dated the arrival of the Americans. This paper therefore suggests that Philippine constitutional history should be analyzed not merely from the influx of American law, but from the time Aguinaldo's Revolutionary Government first articulated the idea of basic human rights that were deserving of recognition by the State.

## II. THE MALolos CONSTITUTION: BIRTH TO DEMISE

The Malolos Constitution was enacted by a Revolutionary Congress that first convened in Malolos, Bulacan, on the 15<sup>th</sup> of September 1898. Among its members were lawyers, physicians, pharmacists, engineers, businessmen, educators, soldiers, artists, and a priest.<sup>8</sup> This was not, however, as varied a conglomeration as might be supposed. Whereas a multi-tiered process of election<sup>9</sup> was established in order to give the citizens of each province a hand in the selection of their representatives, a disproportionately large number of individuals were appointed by Aguinaldo apparently without heed for the qualifications that they were required by decree to possess. In most cases, the "Representatives" did not even originate from the provinces that they were supposed to represent.<sup>10</sup> Strictly speaking, therefore, the Malolos Congress was not a genuinely representative body, since the electoral process was not followed with precision. It is generally conceded that the

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<sup>8</sup> BERNAS I, *supra* note 1, at 9.

<sup>9</sup> Two Decrees issued by Aguinaldo outlined the process of election. The basic procedure is outlined in Articles 2 to 6 of the Decree dated 18 June 1898. Select citizens of each town were to convene in an assembly, in order to elect, by majority vote, the town mayor and heads of each barrio. These officials were required to possess only two qualifications: (1) they had to be over 21 years of age; and (2) they had to have "proven their love for the independence of the country." The town mayors of every town would then form the Provincial Assembly, tasked with electing by majority vote the Governor of the Province, and three councilors, one of Police and Public Order, one of Justice and Civil Registry, and one of Revenues and Property. These four, together with the President and the Mayor of the provincial capital, were to be known as the Provincial Council, who would then elect by majority vote the provincial representatives to Congress. Manila and Cavite were each allowed to elect three representatives; each regular province could elect two; and each of the other provinces and politico-military command posts of the Archipelago could elect one. The second decree, dated 23 June 1898 provided that the "Assembly of Representatives from all the provinces of the Philippine Archipelago" were to be elected as thus outlined. In addition, though, article 11 of the Decree provided that the Government could provisionally appoint Representatives from provinces which had not yet been liberated from Spanish rule, and which consequently could not hold elections. Said Representatives were to be the persons "most capable by reason of their education and social position," provided that they had been born and had resided for a long time in the provinces that they were supposed to represent.

For these Decrees, and for the provisions of the Malolos Constitution, this paper uses the translations of Sulpicio Guevara. SULPICIO GUEVARA, *THE LAWS OF THE FIRST PHILIPPINE REPUBLIC* (1972; 2nd printing, 1994).

<sup>10</sup> CESAR MAJUL, APOLINARIO MABINI, *REVOLUTIONARY 92* (1964; 2nd printing, 1993) (hereafter MAJUL I).

congressmen were, for the most part, members of the *ilustrado* class,<sup>11</sup> and hence numbered among the intellectual elite who had been exposed to the liberal ideas regarding democracy and republicanism that were then prevalent in Europe. The laws that emanated from them, therefore, must be examined in relation to the ideas of the French Enlightenment, imported into the Philippines by those fresh from their European sojourns.

As originally envisioned, the Congress was not meant to be primarily a legislative body. Although their powers included discussing, voting on, and implementing the laws of the Revolution,<sup>12</sup> they were supposed to be mainly an advisory body, created in order to discuss the means of organizing the revolution and of raising funds for its armed forces.<sup>13</sup> The power to enact a constitution was specifically withheld from them, because Mabini, author of the two decrees creating Congress, did not deem it wise.<sup>14</sup>

Be that as it may, Congress evidently considered the creation of a constitution of primary importance, echoing the sentiments of American Revolutionaries in the previous century. Two days after their first session, a committee was formed with the task of framing a constitution. This body was given the job of initially discussing a constitution, and of later on presenting it to Congress at large. Three drafts were originally submitted to the committee for consideration, authored by Pedro Paterno, Apolinario Mabini, and Felipe Calderon. Paterno later withdrew his draft; Mabini's was immediately rejected. It was the Calderon draft, therefore, that eventually became the basis for the Malolos Constitution. As sources, Calderon drew from the Constitutions of France, Belgium, Mexico, Brazil, Nicaragua, Costa Rica, and Guatemala.<sup>15</sup>

Congress discussed in turn each of the ideas of Calderon's draft, meeting thrice weekly from 25 October to 29 November 1898. Congress

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<sup>11</sup> CESAR MAJUL, *THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION* 203 (1967; 2nd printing, 1996) (hereafter MAJUL II).

<sup>12</sup> Decree (23 June 1898), art. 15.

<sup>13</sup> MAJUL II, *supra* note 11, at 19.

<sup>14</sup> LEWIS GLEECK, *AMERICAN INSTITUTIONS IN THE PHILIPPINES* 13 (1976).

<sup>15</sup> MAXIMO M. KALAW, *THE DEVELOPMENT OF PHILIPPINE POLITICS* 126 (1926; reprinted 1986).

objected only to Calderon's proposal of establishing Catholicism as the state religion; the version that was eventually approved provided for freedom of religion and the strict separation of Church and State. Objections were also made, by Mabini, to the creation of a strong legislative arm, favoring a stronger Chief Executive with greater powers than provided by Calderon. But Mabini's proposed objections were overruled, and, apart from the change regarding religion, Calderon's draft was approved *in toto* by the Malolos Congress on 20 January 1899, by Aguinaldo the next day, and promulgated on 22 January.

The Malolos Constitution is undoubtedly the single most important document that emanated from the Malolos Congress. With the enactment of a constitution, the Revolutionary leaders demonstrated their commitment toward clinging to the independence that they had so recently acquired. This independence, so tenuously held onto, would be a meaningless idea unless they showed a radical departure from the structures of the past.

As enacted, the Malolos Constitution was unlike anything the Philippines had ever seen before.<sup>16</sup> First, it helped legitimize the Revolutionary Government — which, prior to the Constitution, owed its legal existence only to Decrees issued by Aguinaldo. More than this, it laid the groundwork for a republican system of government — at once “popular, representative, alternative, and responsible”<sup>17</sup> — with a division of powers into Legislative, Executive, and Judicial branches, two or more of which could “never be united

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<sup>16</sup> Certain of its provisions echo the Constitution of Biak-na-Bato, enacted on 1 November 1897 by Emilio Aguinaldo and other revolutionary leaders. The Malolos Constitution is different from the Constitution of Biak-na-Bato, however, in that its framers intended it to have some measure of permanency; in contrast, the Constitution of Biak-na-Bato was only intended to remain in force for a maximum of two years from its date of promulgation. Thus, there are vital differences between the two Constitutions, in terms of focus, aim, and thrust. In addition, the Malolos Constitution was enacted by a Congress that was, at least in spirit, a representative body. In contrast, the Constitution of Biak-na-Bato was drafted by a government that as yet lacked the popular mandate, and concentrated power in the hands of a few men over whom the people had no means of control or direct influence, whose only authority sprang from abnormal and extra-constitutional conditions.

The bill of rights of a constitution drafted by Mariano Ponce in the early months of 1898 also has some similarities to the Malolos Constitution. However, this draft was never promulgated.

<sup>17</sup> CONST. (MALOLOS), art 4.

in one person or corporation."<sup>18</sup> The division of powers, though, was less to create a system of checks and balances, as simply to define tasks that ought to be performed by a legitimate government, and to delineate the proper persons to perform them.

The legislative arm, with power to be exercised by an Assembly of Representatives, was by far the most powerful branch of government, exercising strong powers over both the Executive and the Judiciary. The President of the Republic was reduced to little more than a figurehead, who, although he had the power to convoke, suspend, and dissolve the assembly, was limited in the exercise of these functions to the periods prescribed by the laws enacted by the selfsame body.<sup>19</sup> Bills, which could originate either from the Assembly or from the President,<sup>20</sup> required a majority vote of the Assembly before they could pass into law; whereas the power to veto such laws was vested in the President, the Assembly could override such a veto by a two-thirds vote.<sup>21</sup> The power to prosecute members of the other two branches of government was also given to the Assembly, which could constitute itself into a Tribunal of Justice, with the power to hear and determine crimes committed by the President and Chief Justice against the security of the State;<sup>22</sup> such power could be exercised even during the adjournment of the Assembly, via the Permanent Commission which was composed of seven Representatives.<sup>23</sup>

Despite the flaws of the Malolos Congress, the fact remains that the drafting of a constitution was a noteworthy accomplishment, especially when one considers that the Representatives were people who, by their own admission, had no experience whatsoever with enacting laws.<sup>24</sup> Whatever judgments this age may pass on the Malolos Constitution, the Malolos Congress undeniably attempted a project of immense magnitude: re-

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<sup>18</sup> CONST. (MALOLOS), art. 4.

<sup>19</sup> CONST. (MALOLOS), arts. 36 and 37.

<sup>20</sup> CONST. (MALOLOS), art. 51.

<sup>21</sup> CONST. (MALOLOS), arts. 61 and 62.

<sup>22</sup> CONST. (MALOLOS), art. 44.

<sup>23</sup> CONST. (MALOLOS), arts. 54 and 55.

<sup>24</sup> BERNAS I, *supra* note 1, at 10.

engineering the existing socio-political system, in order to make Philippine society conform more closely to their ideas as regards the way it ought to be. As is the case with any revolution, an undesirable system of government was sought to be overturned, and another was sought to be created in order to fully eradicate the vestiges of former. For the Revolutionary Congress, it made no sense to simply echo the elements of colonial rule; the government that they aspired to establish was based on their own system of values, in order to ensure that the Revolution was not a useless enterprise. Whether or not they would have succeeded in their ultimate goals, and whether or not their government would have worked, is a question that will never be answered. Within a month after the Malolos Constitution went into effect, war broke out between Filipino and American forces, culminating in the dissolution of the Revolutionary Government and the establishment of American rule. Thus, the Malolos Constitution "was hardly ever in force; in fact, it may be said that it had never been in force."<sup>25</sup>

### III. THE BILL OF RIGHTS: SYMBOLIC SIGNIFICANCE

The bill of rights is the single longest section of the Malolos Constitution, comprising 28 out of 101 Articles, or nearly one-third of the entire document. Included among the rights are the right to citizenship; freedom from arbitrary arrest and detention; the right to a writ of *habeas corpus*; procedural due process; freedom from unreasonable searches and seizures; freedom of religion; freedom from arbitrary taxes; freedom of speech, communication, and association; the right to petition the government for redress of grievances; and the free exercise of civil and political rights.

The bill of rights, seen as an attempt to grant Filipinos a greater share in the exercise of political power, must be viewed in the context of the entire project taken on by the Malolos Congress: that of re-engineering the existing political system. In order to properly situate the bill of rights, it must be read in conjunction with the Malolos Constitution's other provisions, particularly with regard to the framers' views concerning the relation of individuals in

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<sup>25</sup> Teodoro M. Kalaw, *The Constitutional Plan of the Philippine Revolution*, 1 PHIL. L. J. 204, 212 (1914).

society to their political institutions.

Given Congress' project, the Malolos Constitution is important not only because it granted legitimacy to the Revolutionary Government, but also because of the *manner* in which that government was sought to be legitimized. For the first time in the Philippines, there was a recognition, *in the fundamental law of the land*, that the government as an entity owed its very existence to the people of the nation; the people were seen as the masters of the government, and not vice versa. Thus, article 3 of the Malolos Constitution reads: "Sovereignty resides exclusively in the people." To ensure that this was not empty rhetoric, mechanisms were established for the exercise, both direct and indirect, of this sovereignty. For example, the Filipinos were given the right to elect their legislators;<sup>26</sup> to file suit against any member of the judiciary for improper exercise of judicial power;<sup>27</sup> and to petition to the proper authorities for the redress of grievances.<sup>28</sup>

The idea of sovereignty residing in the people was not new to the Revolutionary Government. Even prior to the Malolos Constitution, Aguinaldo's Decrees already exhibited a marked tendency to establish the legitimacy of his government through seeking the consent of the Filipino people. An oft-mentioned phrase in Aguinaldo's various Decrees, authored even when Aguinaldo was calling himself a Dictator, is the urgent desire to conform to the wishes of the governed. Such reliance on the wishes of the people seems inconsonant with the traditional view of dictatorship; despotism, it seems, had no place in the Republic that the Revolutionary Government eventually envisioned. The fact that Aguinaldo himself called for the elections, not only for local and provincial leaders but also for the members of the Revolutionary Congress, reveals an understanding and implementation of the idea that sovereignty resides in the people. Article 3 of the Malolos Congress is thus a continuation of Aguinaldo's initial efforts to legitimize his government through conformity with the collective will of the citizens.

Article 3 of the Malolos Constitution becomes even more important if

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<sup>26</sup> CONST. (MALOLOS), art. 33.

<sup>27</sup> CONST. (MALOLOS), art. 81.

<sup>28</sup> CONST. (MALOLOS), art. 20.

viewed as a concrete translation into law of the political and constitutional ideas of the Revolution's intellectual leaders. The idea of sovereignty residing in the people is a constant theme that runs through the writings of Rizal, Mabini, and Jacinto, all of whom believed that the only legitimate government was that which showed evidence of the consent of the governed. In both of his major works of fiction, Rizal revealed the view that the people are the true source of the authority of the government; to have a stable foundation, a government must have the confidence of the people, and cannot command through trickery or coercion.<sup>29</sup> Mabini, for whom sovereignty meant primarily the right to control the coercive forces in society,<sup>30</sup> also believed that governments owed their legitimacy to popular support. In his "True Decalogue," for example, he wrote that the only legitimate authority in a country was that which had been elected by the countrymen, because it was only through the collective exercise of the people's conscience that God's will could be known.<sup>31</sup> Similarly, Jacinto too believed that the power of those who govern depends upon the love and esteem of the governed.<sup>32</sup> Revolution was thus morally justified in situations when the people's sovereignty, "which naturally belongs to them," was "usurped and trampled upon by a tyrannical and arbitrary government."<sup>33</sup>

From these writings, one can conclude that sovereignty must have meant the same thing to the Constitution's framers as it did to their contemporaries: an exercise of the collective political will of a nation's citizens,

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<sup>29</sup> For a discussion of Rizal's political philosophy, see, generally, RICARDO R. PASCUAL, *THE PHILOSOPHY OF RIZAL* (1962). Chapter V of this work is devoted to Rizal's political philosophy, as gleaned from the *Noli Me Tangere*, *El Filibusterismo*, and his non-fiction works. In essence, Pascual concludes that Rizal believed firmly in the notion that the only true government was that which existed by the consent of the governed, and which ruled morally, with right reason and fairness. In the same vein, Majul quotes Rizal as having believed that power "belongs not to the government, but to the people" (MAJUL II, *supra* note 11, at 62), further gleaning from Elias' speeches in the *Noli* that Rizal believed in a government that drew its legitimacy from the consent of the governed. MAJUL II, *supra* note 11, at 63.

<sup>30</sup> MAJUL II, *supra* note 11, at 78.

<sup>31</sup> Apolinario Mabini, *The True Decalogue*, IV PHILIPPINE SOCIAL SCIENCE REVIEW 313 (1932), cited by MAJUL II, *id.* at 62. God was viewed by Mabini here as the only source of true authority.

<sup>32</sup> Emilio Jacinto, *The People and the Government*, quoted in Epifanio delos Santos y Cristobal, *Emilio Jacinto*, III THE PHIL. REV. 425 (1918), cited in MAJUL II, *id.* at 63.

<sup>33</sup> This is taken from Aguinaldo's Message of June 23, 1898, which was authored by Mabini. Quoted in MAJUL II, *id.* at 77 to 78.

in order to bring about genuine self-governance.<sup>34</sup> In support of this view of sovereignty, there is evidence to indicate that among the aims of the Revolution was the unification of the Filipino people into a single political entity, with a national identity that took precedence over local and partisan affiliations. It is interesting to note that the *Katipunan*, which in its earliest stages centered around the rights and status only of the *Tagalogs*, gradually lost its regional bias in favor of a patriotism that was national in character, echoing the aims of its spiritual predecessor, the *Liga Filipina*, to "unite the entire archipelago into one compact, vigorous, and homogenous body."<sup>35</sup> In concrete terms, this aim of unification made itself manifest in the earnest conviction of the Constitution's framers that the political association of all Filipinos "constitutes a NATION."<sup>36</sup>

Article 3 of the Malolos Constitution, in conjunction with this firm assertion, reveals an understanding of sophisticated ideas as regards the political relationships of human beings vis-à-vis each other and the state. In a very real sense, ideas as regards the social contract between human beings were making themselves manifest in Philippine law.<sup>37</sup> As formulated by Rousseau, the social contract theory suggests that political institutions are formed because each person acknowledges the supremacy of the general will to his own individual will. Knowing this, each person then voluntarily places his person and his power under the supreme direction of the general will. It is this act of association that creates the collective body, the *Republic* or the *body politic*.<sup>38</sup> A further dimension of this is that those who are associated with the body politic share in the sovereign power.<sup>39</sup> This power, however, must be exercised collectively; only the general will of the people can genuinely direct the state according to the object for which it was established.<sup>40</sup> Self-government thus

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<sup>34</sup> Lloyd L. Weinreb, *Natural Law and Rights*, in NATURAL LAW THEORY 278 (Robert P. George ed., 1992).

<sup>35</sup> O.D. CORPUZ, II THE ROOTS OF THE FILIPINO NATION 209 (1989) (hereafter CORPUZ II).

<sup>36</sup> CONST. (MALOLOS), art. 1.

<sup>37</sup> The social contract theory is generally associated with Jean-Jacques Rousseau (1712-1778), whose 1762 work THE SOCIAL CONTRACT is considered to have influenced succeeding political thinkers.

<sup>38</sup> JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT (1762), excerpted in II THE GREAT POLITICAL THEORIES 18-21 (Michael Curtis ed., 1962).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 21.

means the identification of individual will with the general will of the citizens, and establishing a mechanism for the exercise of that general will.

That there was a system of election, at least partially in force, shows that the Revolutionary Congress had a genuine commitment towards bringing to fruition the idea that a democratic nation is governed not by the will of a single individual, but by the general will of the citizens. Prior to the elections called for by the Revolutionary Government, elections in the Philippines, at least at the municipal level, resembled a "marionette play, where the puppets on the stage performed according to a script and the men behind the scenes pulled the strings."<sup>41</sup> Suffrage was extended only to the members of the *principalia* class; elections provided no opportunity for the expression of the will of the people. Even the members of the limited electorate were frequently not given the opportunity to vote in freedom; elections were occasions for local power brokers to exert pressure upon the electorate for the furtherance of the will of a select few. The elections called for by the Revolutionary Government, which extended suffrage to more citizens, sought to remedy the sham of the previous system of electing municipal leaders. For the first time in Philippine history, political power was deemed to reside in the electorate, and not merely in the puppeteers who manipulated the strings. This idea may not have been fully developed in the Philippines in 1898, and, indeed, there is evidence to indicate that the Constitution's framers sought to establish an oligarchy of the intellectual elite,<sup>42</sup> who, in their own estimation, were most qualified to steer the Philippines towards progress. Still, considering that there does not seem to have been any objection by the Filipino masses to the leadership of the educated classes,<sup>43</sup> the rule by those who were better educated

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<sup>41</sup> GLENN ANTHONY MAY, *A PAST RECOVERED* 35 (1989).

<sup>42</sup> Felipe Calderon, the Constitution's primary author, believed that the best educated men were most qualified to run a government, by virtue of their superior training. Said he: "Being fully convinced... that in case of obtaining our independence, we were for a long time to have a really oligarchic republic in which the military element, which was ignorant in almost its entirety, would predominate, I preferred to see that oligarchy neutralized by the oligarchy of intelligence, seeing that the Congress would be composed of the most intelligent elements of the nation. This is the principal reason why I vested Congress with such ample powers, not only within the legislative sphere, but also in its control of the executive and the judicial branches. In one word, where oligarchies were concerned, I preferred the oligarchy of the intelligence to an ignorant oligarchy." Quoted in BONIFACIO SALAMANCA, *THE FILIPINO REACTION TO AMERICAN RULE* 16-17 (1968).

<sup>43</sup> MAJUL II, *supra* note 11, at 19.

does not seem incongruous with a belief in democracy and the primacy of the general will.

Thus, the constitutional recognition of individual rights becomes even more important when read in relation to the idea that sovereignty resides in the Filipino people. The mere existence of the bill of rights in the earliest Philippine constitution reveals the awareness of its framers that the claim that sovereignty resides in the people becomes all but meaningless unless the favorable conditions for the exercise of that sovereignty are also provided. It is not enough to assert that individuals, acting collectively, exercise control over the coercive powers of the state; true sovereignty cannot be obtained unless the government is checked and controlled by guaranteeing individual rights and liberties that cannot be impinged upon. In this manner, any bill of rights operates to place pre-defined limits on the powers that the government may reasonably exercise. Thus, a bill of rights serves also as a bill of restraints, in that it shows that the exercise of governmental power must be circumscribed within reasonable restrictions.<sup>44</sup>

The inclusion of a bill of rights in the Constitution meant having a permanent reminder that a precondition for the exercise of individual freedom is placing restraints on the government's freedom. Symbolically, therefore, the bill of rights in the Malolos Constitution served as a written reminder of the principle that an individual is free only if restrictions are placed on the exercise of governmental power. It is therefore clear that for the Malolos Congress, the government's coercive power had to be used both to protect the people's rights, and to provide the positive societal conditions for these rights to exist in the first place.

The title chosen by the Constitution's framers for the bill of rights — "The Filipinos and their National and Individual Rights" — suggests another dimension of the social contract theory. No definition is given as regards what may be meant by a "national" right or an "individual" right. Presumably, though, an "individual" right is one that may be exercised by a Filipino

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<sup>44</sup> Leonard W. Levy, *Bill of Rights*, in *ESSAYS ON THE MAKING OF THE CONSTITUTION* 297 (Leonard W. Levy ed., 1969; 2d ed. 1987).

individual, while a "national" right seems to refer to the right of the state to demand the performance of duties from its citizens.<sup>45</sup> The relationship between the Filipino and the Philippines thus had a twofold dimension in the Malolos Constitution. On one hand, the citizen had rights which could be asserted against the State; on the other hand, he had corresponding obligations.<sup>46</sup> The fact that duties were imposed on individuals was an explication of the idea that the people as individual citizens had the obligation to protect their collective legal identity, the state. The idea of reciprocal rights and obligations had only then begun to spring forth. Previously, the purported allegiance due to the Crown of Spain had been acquired by the use of force.<sup>47</sup> This reciprocity of rights and obligations is also suggested by Rousseau, who wrote that those associated with the body politic were not merely *citizens* — in the sense of being able to exercise the sovereign power — but also *subjects* — in the sense of being under the laws of the State.<sup>48</sup> Thus, the bill of rights served to remind the citizens that their membership in the body politic meant not only that they were free, but that a necessary condition of that membership was the performance of duties to the political entity to which they belonged. For the framers of the Malolos Constitution, therefore, the exercise of political power, whether by citizens or by the State, was not completely unhampered.

#### IV. THE BILL OF RIGHTS AND HISTORICAL ROOTEDNESS

In the Philippines, the restriction on the powers of government takes on a particular significance when it is realized that the primary aim of the Philippine Revolution was precisely to secure rights for the Filipino people.<sup>49</sup>

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<sup>45</sup> CORPUZ II, *supra* note 35, at 325.

<sup>46</sup> This is discussed more fully below.

<sup>47</sup> Owen Lynch, *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L.J. 279, 292 (1988).

<sup>48</sup> Rousseau, *supra* note 38.

<sup>49</sup> MAJUL II, *supra* note 11, at 201. In 1900, the Schurman Commission had this observation to make: "The more one studies the recent history of the Philippines and the more one strives by conversation and intercourse with the Filipinos to understand and appreciate their political aims and ideals, the more profound becomes one's conviction that what the people want, above every thing, is a guaranty of those fundamental human rights which Americans hold to be the natural and inalienable birthright of the individual but which under Spanish domination in the Philippines were shamefully invaded and ruthlessly trampled upon." 1 REPORT OF THE PHILIPPINE COMMISSION 84 (1900), quoted in BERNAS I, *supra* note 1, at 1.

Throughout the Revolution's history, and even beginning with the campaigns for reforms by those who did not wish to separate from Spain, the desire to obtain more rights for the Filipinos is evident. Indeed, the struggle for independence may be viewed as nothing more than a struggle for greater individual rights and liberties. A popular cry during the Revolution was the single word "*Kalayaan!*" — the surface meaning of which, of course, is simply freedom, but may also be taken to mean a desire for greater freedom in general. One must wonder if the Filipinos would have been as adamant in fighting for independence if greater individual liberties had been accorded them in the first place.

These demands for greater individual liberties were first translated into a rudimentary bill of rights in the Constitution of Biak-na-Bato,<sup>50</sup> which articulated rights such as religious liberty, the right of association, and freedom of the press.<sup>51</sup> These rights were further expanded in a model constitution, commissioned by Aguinaldo and drafted by Mariano Ponce,<sup>52</sup> which was,

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<sup>50</sup> See note 16, *supra*.

<sup>51</sup> The bill of rights of the Constitution of Biak-na-Bato is contained in four articles, as follows:

Article XXII. — Religious liberty, the right of association, the freedom of education, the freedom of the press, as well as the freedom in the exercise of all classes of professions, arts, trades, and industries are established.

Article XXIII. — Every Filipino shall have the right to direct petitions or present remonstrances of any import whatsoever, in person or through his representative, to the Council of Government of the Republic.

Article XXIV. — No person, whatever may be his nationality, shall be imprisoned or held except by virtue of an order issued by a competent court, provided that this shall not apply to crimes which concern the Revolution, the government or the Army.

Article XXV. — Neither can any individual be deprived of his property or his domicile, except by virtue of judgment passed by a court of competent authority.

De Veyra, *The Constitution of Biak-na-Bato*, 1 J. OF THE PHIL. HISTORICAL SOC. 1 (1940), cited in BERNAS I, *supra* note 1, at 7.

<sup>52</sup> The bill of rights of was contained in six articles:

Article 32. All Filipinos are equal before the law. No person shall be molested by reason of his political, religious and social ideas.

Article 33. Religion and liberty of conscience shall not be the subject of legislation.

Article 34. Associations, the expression of ideas, assemblies, education, the exercise of every kind of profession, art, office and industry shall be free provided that they do not impair other rights.

Article 35. Every Filipino citizen shall enjoy the right to petition constituted authority.

Art. 36. No person shall be detained except in virtue of a judicial order issued by a court of competent jurisdiction, except in cases of offense committed against the revolution, the

however, neither ratified nor promulgated. The bill of rights of the Malolos Constitution echoes the rights earlier provided in these two constitutions, both enlarging and refining them. Largely a literal copy of the Spanish Constitution of 1869,<sup>53</sup> the Malolos bill of rights may be seen as the culmination of a series of demands made by the Filipinos against the State. From one perspective, therefore, the bill of rights of the Malolos Constitution is little more than a very particular set of reactions to concrete historical circumstances; it clearly has its roots in the political and social realities that the Revolutionary Government was reacting against.<sup>54</sup>

The Philippines in the nineteenth century was governed by obsolete laws, enacted in Spain, that continued to be enforced by the Spanish authorities, despite ceasing to be effective or even meaningful.<sup>55</sup> Under the Spanish regime, there was a marked absence of rights granted to the Filipino natives. The colonial law under the Castilian conquerors has been characterized as the preservation of the Filipinos in a state of perpetual minority, equivalent to "legal minors" or "immature wards."<sup>56</sup> At the time the Revolution broke out, the legal system in force in the Philippines was both repressive and highly discriminatory. The arbitrariness of the acts of government officials, especially of the *Guardia Civil*, has already been much commented upon by Philippine historians. Government abuses may be gleaned in part from the particular reforms asked for by the Propagandists. A document circulating prior to the outbreak of the Revolution made the

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government and the liberation army; such offense shall be submitted to military jurisdiction.

Art. 37. Nor shall any person be deprived of his property or his domicile, except by final judgment.

Translated from the Spanish text in PLANES CONSTITUCIONALES PARA FILIPINAS 37 (T. Kalaw ed., 1934), cited in BERNAS, *supra* note 1, at 8.

<sup>53</sup> BERNAS I, *supra* note 1, at 11, citing MALCOLM, CONSTITUTIONAL LAW OF THE PHILIPPINE ISLANDS 117 (2nd ed. 1962).

<sup>54</sup> The Schurman Commission also observed that "Philippine plans of reform all start from a concrete basis; they seek deliverance, sure and abiding, from wrongs and cruelties to which the people have hitherto been exposed. The magna charta they want, like that which the English barons wrested from King John, is the counterpart of very definite evils and abuses...." 1 REPORT OF THE PHILIPPINE COMMISSION 84 (1900), cited in BERNAS I, *supra* note 1, at 1.

<sup>55</sup> O.D. CORPUZ, I THE ROOTS OF THE FILIPINO NATION 467 (1989) (hereafter CORPUZ I).

<sup>56</sup> Owen Lynch, *The Colonial Dichotomy: Attraction and Disenfranchisement*, 63 PHIL. L. J. 112, 113 (1988).

following demands:

Expulsion of the friars and restitution to the townships of lands which the friars appropriated, dividing the incumbencies held by them, as well as the episcopal sees, equally between peninsular and insular secular priests.

Spain must concede to us, as she has to Cuba, parliamentary representation, freedom of the press, toleration of all religious sects, laws common with hers and administrative and economic autonomy.

Equality in treatment and pay between peninsular and insular civil servants.

Restitution of all lands appropriated by the friars to the townships, or to the original owners, or in default of finding such owners, the state is to put them up to public auction in small lots of a value within the reach of all and payable within four years, the same as the present state lands.

Abolition of the Government authorities' power to banish citizens, as well as unjust measures against Filipinos; legal equality for all persons, whether peninsular or insular, under the civil as well as the penal code.<sup>37</sup>

From this can be concluded that among the injustices suffered by the Filipinos were the arbitrary expropriation of private land, especially by friars, caused by the absence of substantive and procedural protection of property rights; a lack of representation in Spanish parliament, leading to an inability to make any real decisions as regards governing laws; the absence of press freedom; the absence of religious freedom; and discriminatory practices against the Filipinos.

It is this discrimination against the Filipinos that appears to have been the heart of the abuses of the Spanish authorities. This discrimination

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<sup>37</sup> 1 REPORT OF THE PHILIPPINE COMMISSION 84, quoted in BERNAS I, *supra* note 1, at 3.

was given legal justification through the existence of separate laws governing the Spanish colonizers and their descendants, the Filipino population, and the Chinese and the Chinese *mestizos*.<sup>58</sup> Spanish colonial policy, in recognition of the implicit assumption that the colonizing Spaniard was morally, religiously, and culturally superior to the *indio*, considered the Filipino population as a separate commonwealth<sup>59</sup> so that Spanish laws in the islands were modified when applied to the *indio*.<sup>60</sup>

Some examples of these laws should serve to demonstrate that they were both obsolete and discriminatory. *Ley 18, Título 3, Libro VI* of the *Recopilación*, promulgated in 1618, was still in existence at the time the Revolution broke out. This law greatly hampered Filipino freedom of movement, as it provided that the "natives" were not to be allowed to freely transfer residence from one *pueblo* to another.<sup>61</sup> Freedom of domicile was also limited by *Ley 19*, which provided that no natives were to be allowed to reside outside their *reducciones*.<sup>62</sup> Strict censorship laws prevented not only freedom of expression, but also the influx of new ideas. State censorship of books and newspapers was a common practice. The censor in Manila, for example, was charged with the strict review and examination of all manuscripts before they could be printed and distributed, so much so that all newspapers had to be printed the day before they were circulated so that they could be submitted to the censor for his stamp of approval.<sup>63</sup> *Libro I, Título 24*, sought to prevent the people in the colonies from receiving information from abroad. No book dealing with the Indies and their peoples could be printed and sold in the colonies without special permission from the Council of the Indies nor could any book be introduced into the colonies without the Council's permission.<sup>64</sup> In addition, certain ideas and propositions were forbidden in the universities,

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<sup>58</sup> MANUEL T. CHAN, *THE AUDIENCIA AND THE LEGAL SYSTEM THE PHILIPPINES (1583-1900)* 69 (1998). The population was divided into four legal categories: *indio*, Chinese, Chinese *mestizo*, and Spanish or Spanish *mestizo*. Each category had a distinct set of obligations as well as different privileges.

<sup>59</sup> CORPUZ I, *supra* note 55.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 468.

<sup>64</sup> *Id.* at 467.

convents, and schools, whose curricula were strictly monitored by the State.<sup>65</sup> The absence of substantive rights in the Philippines was further exacerbated by an inefficient and arbitrary judicial system that did little to protect whatever rights were granted by law.<sup>66</sup>

Seen against the backdrop of a highly repressive society, at least where the Filipinos were concerned, the bill of rights may be seen as nothing more than a reaction to the potent devices used by the Spanish authorities for colonization. Primarily, the bill of rights may be seen as egalitarian in aim, seeking the uniform application of laws toward all who were considered Filipino citizens — a broader class of individuals than exists in today's constitution.<sup>67</sup> Where Spanish laws distinguished between four classes of individuals, the Malolos Constitution sought to eliminate this form of discrimination by merely classifying persons into citizens,<sup>68</sup> who could exercise the full range of civil and political rights, and non-citizens, who could not. As a further mechanism for protecting the right to citizenship, the constitution also provided that no person was to be deprived of the status of being a Filipino, except in accordance with law.<sup>69</sup> This division of individuals into only two categories demonstrates the commitment toward preserving the nationhood of the Philippines as a political association of Filipinos, in keeping with the social contract theory. More than this, it also shows a marked tendency toward a non-discriminatory legal perspective with regard to all those who were part of the political entity.

A further sampling of the bill of rights furthers the thesis that its provisions were inspired by the realities of life under Spanish rule. If, under

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<sup>65</sup> *Id.* at 468.

<sup>66</sup> BERNAS I, *supra* note 1, at 3-5. Bernas observes that, whereas there was a well-defined hierarchy of courts, the judicial system was characterized by slowness and arbitrariness, in the trial of both civil and criminal cases. The final outcome of this system was usually a denial of justice, especially for those who could not afford to wait.

<sup>67</sup> CONST. (MALOLOS), art. 26. The marked difference between this and CONST. art. IV, sec. 1 is that the Malolos Constitution recognized both the principles of *jus sanguinis* and *jus soli*.

<sup>68</sup> CONST. (MALOLOS), art. 6. The bill of rights provided that the right to citizenship was an independent political right, to be enjoyed by virtue of birth, naturalization, or domicile. A more complete discussion is given below.

<sup>69</sup> CONST. (MALOLOS), art. 6.

Spanish law, the *indio* had virtually no choice with respect to his domicile, the Malolos Constitution sought to reverse this situation by providing that Filipinos had the freedom to transfer residence, and could not be compelled to move except by virtue of a final judgment.<sup>70</sup> The sanctity of the household was also protected for all those residing in the Philippines, whether Filipino or foreigner. Except in specified cases, no one could enter into the dwelling house of any Filipino or foreign resident to search his papers and effects unless decreed by a competent court.<sup>71</sup>

If, under Spain's rule, land could be arbitrarily seized by the Spanish authorities, the Malolos Constitution ensured that no one could be deprived of his property by expropriation except on grounds of public necessity and benefit, previously declared and justified by proper authority.<sup>72</sup> Indemnification of the land's owner had to occur prior to the expropriation. As a further safeguard, no institution could be established in order to restrict or deprive individuals of their right to own property.<sup>73</sup>

In contrast to the strict censorship laws under Spain, the Malolos Constitution provided for the right to express ideas freely, orally or in writing, whether through the press or by other similar means.<sup>74</sup> Freedom and security of correspondence were also guaranteed.<sup>75</sup> Further Spanish abuses, well-documented in Philippine history, are addressed by the bill of rights. Scattered provisions serve to safeguard the individual's freedom from arbitrary arrest and detention,<sup>76</sup> freedom from arbitrary taxes,<sup>77</sup> and freedom of religion.<sup>78</sup>

The historical rootedness of the Malolos bill of rights is also made evident by the fact that many of its provisions were simply the translation into law of practices that had already become prevalent under Aguinaldo's

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<sup>70</sup> CONST. (MALOLOS), art. 11.

<sup>71</sup> CONST. (MALOLOS), art. 10.

<sup>72</sup> CONST. (MALOLOS), art. 17.

<sup>73</sup> CONST. (MALOLOS), art. 32.

<sup>74</sup> CONST. (MALOLOS), art. 20.

<sup>75</sup> CONST. (MALOLOS), art. 12.

<sup>76</sup> CONST. (MALOLOS), art. 7.

<sup>77</sup> CONST. (MALOLOS), art. 18.

<sup>78</sup> CONST. (MALOLOS), art. 5.

Revolutionary Government. The practice of petitioning the government for the redress of grievances was common in the early days of the Republic;<sup>79</sup> translated into law, this is embodied in article 20 of the Malolos Constitution, which provides for the right to petition authorities, whether collectively or individually. Further, press freedom was encouraged by Aguinaldo's regime, which established an official press, and actively solicited articles from the Filipinos.<sup>80</sup> Thus was freedom of the press also embodied as a right by article 20.

When it is realized that the articulation of these rights was only possible because of the prevalent intellectual and moral climate, especially in Europe, the historical rootedness of the Malolos Constitution becomes even more apparent. In the 17th and 18th centuries, for the first time, philosophers were beginning to use theories as regards the natural law<sup>81</sup> to formulate theories as regards the objective reality of human rights.<sup>82</sup> There was a growing awareness that if a right was to be a fairly determinate thing, not something abstract or intangible, then the establishment of their independent identity was essential.<sup>83</sup> Rights could not simply be derived from a set of posited rules; the idea of natural rights or human rights is a search for the rights that human beings have by their very nature.<sup>84</sup>

At least in part, this belief in the existence of natural rights motivated both the French revolution and the later American revolution.<sup>85</sup> A political

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<sup>79</sup> MAJUL II, *supra* note 11, at 200.

<sup>80</sup> *Id.*

<sup>81</sup> In its most basic formulation, a belief in natural law means a belief in a natural order in the universe. With regard to human beings, natural law implies a belief that, just as there are laws governing the physical world, there are laws governing the world of human behavior, which may not be articulated, but to which human beings have a moral obligation to conform. In classical Greek culture, when natural law theories were first formulated, these laws as regards human behavior were confined to the sphere of moral behavior; natural law was sought as a justification for belief in an objective moral order, that transcended mere subjective belief as regards good and evil.

<sup>82</sup> Weinreb, *supra* note 34, at 296.

<sup>83</sup> *Id.* at 280.

<sup>84</sup> *Id.* at 295.

<sup>85</sup> Knud Haakonsen, *From natural law to the rights of man*, in A CULTURE OF RIGHTS: THE BILL OF RIGHTS IN PHILOSOPHY, POLITICS, AND LAW 1791 AND 1991 24 (Michael J. Lacey and Knud Haakonsen eds., 1991).

philosophy had begun to develop, based on the theory that men had certain inalienable rights — based in part on natural law, which is also used as a justification for the existence of a social contract between the ruler and the subject.<sup>86</sup> Among the most influential writers on the subject include Locke, Hobbes, Montesquieu, Rousseau, and Hutcheson, widely regarded as having popularized the idea that there was an *a priori* order governing human conduct.

Different dimensions of natural law philosophy, in relation to the social contract, are developed by these thinkers. Locke is believed to have been responsible for the widespread acceptance of the idea that men are equal simply by nature of being men — by which he meant the equal right of every man to freedom, without being subject to the will or authority of any other man.<sup>87</sup> He is also credited with having formulated initial glimmerings of the theory that a civil government rests ultimately on the consent of the governed<sup>88</sup> — ideas that are the basis of American democracy,<sup>89</sup> which were later developed by Rousseau. Montesquieu, for his part, also developed an elaborate theory on the natural order of the world. In *The Spirit of Laws*, he asserted that these laws of nature are antecedent to the laws of religion, morality, or political and civil laws, because they are derived entirely from the barest fact of human existence.<sup>90</sup> For Montesquieu, these natural laws included the search for peace; the quest for nourishment; human attraction; and the desire to dwell in society.<sup>91</sup> Evident in Hobbes and Hutcheson is the attempt to secularize natural law philosophy, in response to the skeptical reaction to religious formulations of natural law philosophy, all of which were dependent on positing the existence of God.<sup>92</sup> Hobbes, examining the empirical fact of human behavior, attempted to posit universal truths about humanity by abstracting from a variety of forms of moral behavior, and social and political institutions. According to Hobbes, man is endowed with reason and a natural

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<sup>86</sup> EUGENE C. GERHART, AMERICAN LIBERTY AND "NATURAL LAW" 57-58 (1953).

<sup>87</sup> *Id.* at 62.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 139.

<sup>90</sup> *Id.* at 25.

<sup>91</sup> *Id.*

<sup>92</sup> Haakonsen, *supra* note 85, at 24-27.

inclination toward sociability. In the assertion of their respective claims or rights concerning themselves, each other, and the goods of the world, men, acting rationally, have to enter into agreements with each other about the creation of a civil society with an absolute sovereign power that will ensure harmony between conflicting claims. Rights are features of human nature; they are something men have. If they did not pursue these claims rationally, human life would be impossible. For Hobbes, the function of reason is precisely to judge one's own claims vis-à-vis the claims of others.<sup>93</sup> Hutcheson, a 17th century thinker, makes the clearest formulation of the idea that men's individual moral judgments can be harmonized through seeking a common end: the common good of society. Common good being the end, men live in society not merely because they voluntarily choose to limit their individual freedom, but in order to fulfill their duty to seek this harmonious end.<sup>94</sup>

These ideas, to which the framers of the constitution were undoubtedly exposed,<sup>95</sup> must have prompted Filipinos — like their French and American counterparts — to seek state recognition of human rights, held to be basic and sacrosanct. Prior to the Philippine revolution, members of the Propaganda Movement, though not necessarily seeking independence from Spain, clamored for the extension to the Filipinos of the rights enjoyed by the Spaniards under the Spanish Constitution.<sup>96</sup> The writings of Rizal, a standout among the Propagandists, show a belief that rights were being demanded because they were naturally due to Filipinos by virtue of their intrinsic worth as human beings. Rizal believed that man possessed by his very nature certain moral and intellectual potentials, and that any attempt to disfigure his potentialities, such as by enslaving him or by misleading him through trickery, was morally wrong.<sup>97</sup> For Rizal, man, because he was created by God, had

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 31-32.

<sup>95</sup> For a discussion of the relationship between the Filipino intellectuals in Spain and the Revolution, see JOHN SCHUMACHER, *THE PROPAGANDA MOVEMENT: 1880-1895*.

<sup>96</sup> BERNAS I, *supra* note 1, at 2.

<sup>97</sup> MAJUL II, *supra* note 11, at 22-32. A sampling of Rizal's writings regarding human dignity rights shows the thrust of his thoughts about men's fundamental rights. In his letter to the women of Malolos, Rizal stressed that human dignity was a fundamental human right. "Men are born equal, naked, and without chains. They were not created by God to be enslaved, neither were they endowed with reason to be fooled by others.... All are born without chains, free, and no one can subject the will and spirit of

certain rights that were due him; the human being was the masterpiece of creation, and was thereby endowed by God with rights that were the very principle behind human dignity.<sup>98</sup> The "lofty destiny" that God was guiding man towards could not be attained "so long as there are oppressed peoples, so long as there are some who live on the tears of many ... while whims are laws, while there are nations that subjugate others."<sup>99</sup> It is therefore evident that the ideas that motivated the French Revolution were ideas that Rizal also adhered to. In fact, while a member of the separationist *Liga Filipina*, Rizal published and circulated a Filipino translation of the French "Declaration of the Rights of Man." Called "*Ang mga Karapatan ng Tao*," this handbill was distributed among the masses, apparently with the aim of acquiring popular support for the ideas contained therein.

The writings of revolutionaries such as Bonifacio and Mabini also show their belief in the natural rights of humankind, motivated by a belief in a divine creator. Bonifacio's draft of the Katipunan's guiding principles, for example, shows his belief that the Revolution was ultimately guided by God, and that its motivating spirit — love for country and fellowman — was simply a translation of the love for God into human action.<sup>100</sup> Interestingly, one of the duties of the people was to believe in the existence of divine justice<sup>101</sup> — thus pointing to Bonifacio's belief in God-given order as a condition of human existence. From this can be gleaned an awareness that fighting for rights of the Filipinos was simply to fight for divine justice — to give the natural order of things on earth. The role of natural law in motivating the quest for rights is even more apparent in the writings of Mabini. He believed that man was

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another. Why should you submit to another your noble and free thought?" Rizal, *Message to the Young Women of Malolos*, in *POLITICAL AND HISTORICAL WRITINGS* 57, 65 (National Heroes Commission ed., 1964).

<sup>98</sup> MAJUL I, *supra* note 10, at 280.

<sup>99</sup> Rizal, *Masonry*, in *MISCELLANEOUS WRITINGS OF DR. JOSE RIZAL* 128 (National Heroes Commission ed., 1964).

<sup>100</sup> Bonifacio's draft for the principles guiding the Katipunan is in the form of a ten commandments outlining the "Duties of the Sons of the People." It begins with the exhortation to "Love God with all thy heart." The true love of God, for Bonifacio, meant "the love of thy country... and thy fellow-man." Bonifacio also claimed that "the aims of the K.K.K. are God-given," and that "desires for thy country are also desires of God." Quoted in M. KALAW, *supra* note 15.

<sup>101</sup> The tenth among the Duties of the People was to "believe in the punishment of every scoundrel and traitor and in the reward of every good act...." *Id.*

endowed by God with inalienable rights and that liberty was a condition wherein man could enjoy those natural rights.<sup>102</sup>

The writings of Rizal, Mabini, and Bonifacio echo the teachings of scholastic philosophy — where the quest for human rights is the quest for the natural order as predetermined by the divine legislator.<sup>103</sup> Whereas this religious flavor is absent from the writings of Jacinto, he too believed that there were certain qualities such as liberty and equality which by nature belonged to man. Jacinto understood equality to mean fundamental sameness among men, regardless of race or differing talents. "All men are equal," he wrote, "be the color of their skin black or white. One man may be superior to another in wisdom, looks or wealth, but they are equal as men."<sup>104</sup> For him, freedom — something equally due to every man — was a situation in which there was no tyrannous restriction of man's actions, which could then be guided by his natural reason.<sup>105</sup>

These writings reveal, in a very general sense, that the Revolution was motivated at heart by a belief in natural rights of humankind. Seen as the ultimate expression of these ideas, the bill of rights of the Malolos Constitution must be viewed as an attempt to codify the natural rights that human beings were believed to possess.

At heart, the rights are concerned with freedom, used in two senses: first, there was the freedom *to* perform actions, as provided, say, by freedom of

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<sup>102</sup> MAJUL II, *supra* note 11, at 196-197.

<sup>103</sup> In scholastic philosophy, the existence of a Supreme Deity, who created human beings, is presupposed; in this context, the philosopher is thus concerned with attempting to discover the dimensions and aspects of a human being's relationship with God. Just as there are laws governing the physical world, there must be laws governing human behavior, by virtue of the divine legislator. Divine or eternal law was discoverable through the judicious exercise of human reason. Natural law is the imperfect human formulation of God's divine law — imperfect due to the limitations of human intellect. Positive law, or written law governing human conduct, is even more imperfect and limited. Still, because of the natural order in God's created world, human conduct may be moral or immoral, just or unjust, even in the absence of express recognition in positive law. Natural rights stemming from the essence of a divine creation are simply part of the order of the created world. Thus, the assertion of basic human rights against the state found ample justification in Catholic Dogma.

<sup>104</sup> This numbered among the Doctrines of the Katipunan, written by Jacinto. Quoted in M. KALAW, *supra* note 15, at 71.

<sup>105</sup> MAJUL I, *supra* note 10, at 32 to 36.

religion, and freedom of expression; and, second, there was freedom *from* the oppressive exercise of power, as provided for example by the freedom from arbitrary arrest and detention, freedom from whimsical deprivation of property, and freedom from capricious imposition of taxes. These freedoms were given additional protection by other safeguards written into the bill of rights, which further limited the State's power to interfere with their exercise. Article 16, for example, provided that no one could be temporarily or permanently deprived of his rights, except by virtue of judicial sentence. Article 19 provided that the full exercise of civil and political rights was a right in itself, in the exercise of which no Filipino could be impeded. Article 30 makes reference to the right against arbitrary arrest and detention, the right against unlawful entry, the right against unreasonable searches and seizures, the right not to be compelled to change residence, and the rights of freedom of speech and association. These could not be suspended, partially or wholly, in any part of the Republic, except temporarily and by authority of law, and only when the security of the State in extraordinary circumstances so justified their suspension. Article 31 prevented the State from judging any person by a special law or by a special tribunal, thus ensuring the right to due process. Article 32 specifically prevented Filipinos or the government from establishing laws on primogeniture, or from conferring or accepting honors, decorations, or honorific titles of nobility, thus ensuring the maintenance of political equality among Filipinos.

Most significant from the perspective of natural rights philosophy is the assertion in article 28 of the Malolos Constitution that the enumerated rights are not exclusive in nature. The provision reads: "The enumeration of the rights provided for in this title does not imply the denial of other rights not expressly mentioned." Thus, despite the already extensive discussion of rights, the framers apparently felt the need to leave the bill of rights open-ended, with the possibility of inserting future rights for individuals to assert as the need arose. Article 28 thus eradicates any possibility of denying such rights simply because they were not mentioned in the Constitution. Apparently, the Malolos Congress understood that it was impossible to completely define, in positive law, the rights that are inherent in human beings. This proves their understanding that rights may exist, whether or not they are recognized by the prevailing legal system. This provision is similar to the ninth amendment to

the United States Constitution,<sup>106</sup> which reads: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This suggests that a common philosophical belief in the existence of natural rights motivated the framers of the Malolos Constitution and the Constitution of the United States.

This belief in the existence in the natural rights of man becomes important because the ideas first explicated by Locke and Montesquieu have been called the basis of Philippine laws to this day.<sup>107</sup> Thus, even prior to the arrival of the Americans, the stage was set for the development of a legal system along the same constitutional lines that exist in the Philippines today.

#### V. THE BILL OF RIGHTS: A COMPARATIVE ANALYSIS

Since the Malolos bill of rights and the American bill of rights grew from the same philosophical foundation, it is not surprising to note several similarities between them, even if the U.S. bill of rights had no direct influence on the framers of the Malolos Constitution.<sup>108</sup> This, in turn, may account for the similarities among the Malolos bill of rights, and the bills of rights of the 1935, 1973, and 1987 Constitutions. A comparison among all these documents reveals marked similarities between the Malolos Constitution and later Philippine constitutions, and bears out the thesis that they share a common philosophical heritage. It is interesting to see how the main provisions of the Malolos bill of rights may also be found in the 1987 Constitution. Thus, in essence, the bill of rights of the Malolos Constitution survives to this day.

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<sup>106</sup> Adopted in 1791.

<sup>107</sup> Perfecto V. Fernandez, *Sixty Years of Philippine Law*, 35 PHIL. L. J. 1389, 1390 (1960).

<sup>108</sup> M. KALAW, *supra* note 15. Kalaw observes that the United States Constitution did not have any direct relation to the Malolos Constitution; indirectly, though, it may have affected the Malolos Constitution because it may have influenced the framers of the Constitutions of Latin America, on which Malolos was based.

### A. Citizenship

The Malolos bill of rights, like the U.S. bill of rights, discusses who were to be considered citizens of the respective States. Title IV of the Malolos Constitution begins with an enumeration of those who were considered Filipino citizens. The category included: (1) all persons born in the Philippine territory; (2) children born of a Filipino father or mother, although born outside of the Philippines; (3) foreigners who had obtained certificates of naturalization; and (4) foreigners who, without such a certificate, had acquired domicile in any town within Philippine territory, by virtue of uninterrupted residence for two years, with an open abode and known occupation, and contribution to all the taxes imposed by the Nation.<sup>109</sup> Similarly, the United States Constitution provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."<sup>110</sup> This right to be a citizen of the Philippines is also found in succeeding Filipino Constitutions, which invariably accord a separate title thereto. Thus, citizenship is found in article IV of the 1935 Constitution,<sup>111</sup> article III of the 1973 Constitution,<sup>112</sup> and article IV of the 1987 Constitution.<sup>113</sup>

The division of individuals into Filipinos and non-Filipinos is an important one in the Malolos Constitution. Whereas foreigners were accorded the right to freely reside in the Philippines, and to engage in any occupation or profession which needed no special license,<sup>114</sup> the full range of civil and political rights could only be exercised by those whom the Philippine Republic recognized as its citizens. Succeeding articles make specific reference to rights that were granted only to Filipinos, and those that could be enjoyed by both Filipinos and foreign residents. Among the privileges that could only be exercised by Filipinos were the holding of office with any authority or jurisdictional power,<sup>115</sup> and the establishment and operation of institutions of

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<sup>109</sup> CONST. (MALOLOS), art. 6.

<sup>110</sup> The fourteenth amendment to the United States Constitution, adopted in 1868.

<sup>111</sup> The enumeration is found in CONST. (1935), art. III, sec. 1, par. (1).

<sup>112</sup> The enumeration is found in CONST. (1973), art. III, sec. 1.

<sup>113</sup> The enumeration is found in CONST. art. IV, sec. 1.

<sup>114</sup> CONST. (MALOLOS), art. 24.

<sup>115</sup> CONST. (MALOLOS), art. 26.

learning.<sup>116</sup> Certain obligations were imposed only on Filipinos, such as the duty to defend the Philippines, and to contribute to the expenses of the State in proportion to his means.<sup>117</sup> Apparently, therefore, the Malolos Constitution's framers recognized that the "core of citizenship is the capacity to enjoy political rights,"<sup>118</sup> and thus made specific reference to rights that were granted only to Filipinos.

Interestingly, in the Malolos Constitution, the definition of the Philippines' citizens is grouped together with the bill of rights. Apparently, therefore, the framers of the Malolos Constitution viewed citizenship itself as a discrete right, of which no one could be deprived except in accordance with law. This provision is echoed in the 1935, 1973, and 1987 Constitutions, all of which provide that "Philippine citizenship may be lost or reacquired in the manner provided by law."<sup>119</sup> Apparently, the framers of the Malolos Constitution understood that citizenship is "man's basic right for it is nothing less than the right to have rights."<sup>120</sup> The Malolos framers evidently had some awareness of the bond of allegiance between the citizen and the State, and of the State's interest in protecting the political entity formed by its citizens.

#### **B. Freedom from arbitrary arrest and detention; procedural due process**

Scattered provisions in the Malolos bill of rights have reference to an individual's freedom from arbitrary arrest and detention. Article 7 provided that no Filipino or foreigner could be detained or imprisoned except for the commission of a crime, and in accordance with law. Article 8 provided that all persons detained had to be discharged or delivered to the judicial authority within 24 hours following the act of detention, which would be without legal effect unless the arrested person was duly prosecuted within 72 hours of delivery to a competent court. Under article 9, citizens could not be

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<sup>116</sup> CONST. (MALOLOS), art. 23.

<sup>117</sup> CONST. (MALOLOS), art. 27.

<sup>118</sup> BERNAS II, *supra* note 2, at 558.

<sup>119</sup> CONST. (1935), art. IV, sec. 2; CONST. (1973), art. III, sec. 3; CONST. art. IV, sec. 3.

<sup>120</sup> Justice Warren's dissent in *Perez v. Brownell*, 356 U.S. 44, 64 (1958), quoted in BERNAS II, *supra* note 2, at 559.

imprisoned except by virtue of an order by a competent court. This order of imprisonment had to be ratified or confirmed within 72 hours following the said order, after the accused was given the opportunity to be heard.

Articles 13 and 14 provide a rudimentary framework for judicial proceedings following arrest. Under article 13, any order of imprisonment had to be justified; absent this requisite, or if the ground on which the order was issued was later proven in court to be unlawful or manifestly insufficient, the person to be detained or whose imprisonment was not ratified within the period prescribed by article 9 had the right to recover damages. Article 14 provided that no Filipino could be prosecuted or sentenced except by a judge or court of proper jurisdiction, and according to the procedure prescribed by law. Under article 31, the State was prevented from judging any person by a special law or by a special tribunal; war and marine laws could apply only to crimes and delicts that were intimately related to military or naval discipline.

Taken together, these provisions express the sentiment that there was a proper procedure that had to be followed before a person could be deprived of liberty. The Malolos Constitution makes reference to the entire process whereby a person could be deprived of liberty, beginning with his arrest, and continuing through the trial until eventual sentencing. Thus, in essence, the Malolos Constitution's provisions concerning the deprivation of an individual's liberty are identical in spirit to the famous clause in the United States bill of rights<sup>121</sup> — a clause which found its way to succeeding Philippine Constitutions.<sup>122</sup>

In the Malolos Constitution, the right to be free from arbitrary arrest and detention is supported by the equivalent to the privilege of a writ of *habeas corpus*. Article 15 provided that, barring exceptions enumerated in the Constitution, all persons illegally detained or imprisoned had the right to be released upon their own petition or upon the petition of another person. Personal and pecuniary penalties could be imposed upon the person who

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<sup>121</sup>The "due process" clause is usually associated with the fourteenth amendment, adopted in 1868, part of which reads: "nor shall any State deprive any person of life, liberty, or property, without due process of law...." This phrase is also found in the fifth amendment.

<sup>122</sup> CONST. (1935), art. III, sec. 1, par. (1); CONST. (1973), art. IV, sec. 1; CONST. art. III, sec. 1.

ordered, executed, or caused to be executed the illegal detention or imprisonment. While not specifically found in the bill of rights of the American Constitution, the privilege of the writ of *habeas corpus* is protected by our current Philippine Constitution,<sup>123</sup> as well as by the Constitutions of 1935<sup>124</sup> and 1973.<sup>125</sup>

### C. Freedom from unreasonable searches and seizures

Article 10 of the Malolos Constitution provided for the sanctity of the households of those residing in the Philippines, which were protected from the unwarranted intrusion of governmental authority. Except in urgent cases of fire, inundation, earthquake or other similar danger, or by reason of unlawful aggression from within, or in order to assist a person therein who cried for help, no one could enter the dwelling-house of any Filipino or foreign resident, or search his papers and effects, unless decreed by a competent court. Such entry, and search of papers and effects, could be executed only in the daytime, and only in the presence of the person whose house was searched, a member of his family, or, in their absence, of two witnesses who resided in the same locality. An exception to this rule applied to those caught *in fraganti*, and who subsequently took refuge in their residences. Authorities could then enter their dwelling-houses, but only for the purpose of making arrests. If, however, the criminal took refuge in the house of a foreigner, the consent of the latter had to be obtained. Like orders of imprisonment, orders of search had to be ratified. In the absence of such justification, the aggrieved party was entitled to recover damages.

As presently worded, the Constitutional protection against unreasonable searches and seizures has dimensions that are absent in the Malolos Constitution. Article III, section 2 of the 1987 Constitution reads thus: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and

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<sup>123</sup> CONST. art. III, sec. 15.

<sup>124</sup> CONST. (1935), art. III, sec. 1, par. (14).

<sup>125</sup> CONST. (1973), art. IV, sec. 15.

for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." In wording, the current provision may be traced back to the fourth amendment to the United States Constitution,<sup>126</sup> which, in abbreviated form, is present in McKinley's Instructions,<sup>127</sup> the Philippine Bill of 1902,<sup>128</sup> and the Autonomy Act of 1916.<sup>129</sup> Article III, section 1, paragraph (3) of the 1935 Constitution<sup>130</sup> and article III, section 3 of the 1973 Constitution<sup>131</sup> are virtually identical to the fourth amendment. Thus, the Malolos provision was more limited in scope than the provisions found in the fourth amendment and the Constitutions of 1935, 1973, and 1987. As worded, the Malolos provision merely protected the household of Philippine residents against unwarranted intrusion; the other provisions protect not merely the sanctity of the household, but also the privacy and sanctity of the person himself.<sup>132</sup>

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<sup>126</sup> The fourth amendment to the United States Constitution, adopted in 1791, reads thus: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>127</sup> President McKinley's instructions contain the phrase: "the right to be secure against unreasonable searches and seizures shall not be violated...." Quoted in BERNAS I, *supra* note 1, at 296.

<sup>128</sup> The wording of this document, as regards unreasonable searches and seizures, is identical to President McKinley's Instructions. Quoted in BERNAS I, *supra* note 1, at 297.

<sup>129</sup> The Autonomy Act provided that "the right to be secured against unreasonable searches and seizures shall not be violated." Quoted in BERNAS I, *supra* note 1, at 300.

<sup>130</sup> This provision reads thus: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>131</sup> This provision reads thus: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrants or warrants of arrest shall issue but upon probable cause, to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>132</sup> BERNAS II, *supra* note 2, at 147.

Still, the Malolos Constitution recognized that the inviolability of the home is a fundamental right, even imposing sanctions on those who violated it. In this, the Malolos Constitution expressed the same sentiment that a man's home is his castle — the same sentiment that a 1904 Philippine decision claimed was the primary purpose of the provision against unreasonable searches and seizures. In colorful language, the Supreme Court claimed that

[t]he privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, in rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled .... The poorest and most humble citizen or subject man, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm, and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against the owner's will; none of his forces dare cross the threshold of even the humblest tenement without its owner's consent.<sup>133</sup>

Thus, whereas the wording of the present constitutional provision directly descended from the fourth amendment, it bears kinship to the Malolos Constitution, at least insofar as the sanctity of the household is concerned.

Also important is the fact that the Malolos Constitution recognized that any entry into a private residence had to be backed up by a decree issued by a competent court. Despite the absence in the Malolos bill of rights of the concept of "probable cause," the Malolos framers had an awareness that the protection granted by the Constitution meant that the authority of a "magistrate clothed with power"<sup>134</sup> stood as the intermediary between the private citizen and the intrusion of governmental authority. Fundamentally, therefore, the Malolos Constitution was motivated by the same spirit as the existing constitutional provision.

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<sup>133</sup> U.S. v. Arceo, 3 Phil. 381, 384 (1904), quoted in BERNAS II, *supra* note 2, at 197.

<sup>134</sup> BERNAS II, *supra* note 2, at 198.

#### D. Freedom of religion; the separation of Church and State

Freedom of religion is protected by article 5 of the Malolos Constitution, which reads: "The State recognizes the freedom and equality of all religions, as well as the separation of Church and State." This was most hotly contested, as Calderon initially proposed the establishment of the Roman Catholic Church as the State religion.<sup>135</sup> Calderon claimed that the Philippines, composed as it was of various regional groupings, needed a single unifying factor that would bind the nation together. The proponents of the separation of Church and State, on the other hand, vehemently denied that religion was the single unifying force that linked the Filipinos together; secular values, which were grounded in and promulgated by reason, was also a unifying force. Citing the abuses of power that had come about when both civil and religious powers were concentrated in the same hands, Tomas del Rosario opposed the establishment of a state religion on the ground that historically, many of the undesirable events of the past were attributable to the unity of Church and State.<sup>136</sup> The resultant provision thus guaranteed religious liberty, as earlier enunciated in both the Constitution of Biak-na-Bato<sup>137</sup> and Ponce's model constitution.<sup>138</sup>

Religious freedom is found in the first amendment of the United States Constitution.<sup>139</sup> In the Philippines, freedom of religion emerged under American rule in the Instructions of President McKinley, dated April 7, 1900, to the effect "...that no law shall be made respecting an establishment of

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<sup>135</sup> Article 5, as initially drafted by Calderon, reads thus: "The nation shall protect the cult and the ministers of the Roman Catholic Apostolic religion, which is the religion of the State, and shall not utilize its revenues for the support of any other cult."

Other provisions, also rejected by the Malolos Congress, are as follows:

Article 6. Any other cult may be exercised privately, provided that it is not against morality and good customs, and does not endanger the security of the State."

Article 7. The acquisition and discharge of all duties and official functions of the Republic, as well as the exercise of all civil and political rights, are independent of the religion of the Filipino citizens.

<sup>136</sup> MAJUL I, *supra* note 10, at 163.

<sup>137</sup> See note 51, *supra*.

<sup>138</sup> See note 52, *supra*.

<sup>139</sup> Adopted in 1791. This amendment provides in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...."

religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed...." This provision implemented article X of the Treaty of Paris, which guaranteed that territories ceded to the United States had the right to the free exercise of religion.<sup>140</sup> The Philippine Bill of 1902<sup>141</sup> and the Autonomy Act of 1916<sup>142</sup> also guaranteed the same freedom.

The current Philippine Constitution's provision respecting the freedom of religion reads thus: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."<sup>143</sup> This, with minor variations in wording and punctuation, is the same provision found in the 1935<sup>144</sup> and 1973<sup>145</sup> Constitutions.

In discussing religious freedom, Bernas points to three important elements that he associates with the advent of the Americans: first, that the Catholic Church ceased to occupy the privileged position that it had enjoyed under Spanish rule; second, that other religions were equally recognized; and, finally, that there was the severance between Church and State, and the elimination of any institution that tended to produce their union.<sup>146</sup> Article 5,

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<sup>140</sup> BERNAS I, *supra* note 1, at 150.

<sup>141</sup> The relevant portion of the Philippine Bill of 1902 reads thus: "That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." Quoted in BERNAS I, *supra* note 1, at 297.

<sup>142</sup> The relevant portion of the Autonomy Act of 1916 reads thus: "That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such." Quoted in BERNAS I, *supra* note 1, at 299.

<sup>143</sup> CONST. art. III, sec. 5.

<sup>144</sup> CONST. (1935), art. III, sec. 1, par. (7).

<sup>145</sup> CONST. (1973), art. IV, sec. 8.

<sup>146</sup> BERNAS I, *supra* note 1, at 150-151.

which provides for both the free exercise of religion and the separation of Church and State, provides hints that these same effects might eventually have resulted had the Malolos Constitution ever been enforced. Granting that article 5 was temporarily suspended by article 100 of the Malolos Constitution,<sup>147</sup> apparently due to the feeling that this provision might alienate the powerful Filipino clergy,<sup>148</sup> this suspension, however, may be construed as simply the concession made by the Malolos Congress to the exigencies of the times. The fact that they so enacted the said provision and rejected Calderon's proposal, shows their commitment to the ideals of religious liberty. Thus, the seeds of religious freedom existed in the Philippines even before this found effect under the American organic acts.

The attempt at the secularization of the Philippine Islands, begun by the Malolos Congress, marked another interesting development in the status of the Revolutionary Government. More than merely a reaction against the excesses perpetuated by the Spanish friars, the vote for secularization displayed a growth in the political maturity and sophistication of Aguinaldo's government. It has been asserted that the movement of a politically mature state into modernization involves a movement into the increased secularization of laws.<sup>149</sup> A sacral political culture connotes a heavy reliance on religious beliefs to explain behavior or to justify authority. A secular political culture, in contrast, refers to a dominantly rational-scientific belief system.

With the attempt to move away from any definite link to a formal, established religion, the Malolos Congress thus showed a further dimension of their understanding that the origin of positive law is the collective will of the state. Thus, with article 5, conditions were further established for the movement into the modern era of laws as understood today.

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<sup>147</sup> CONST (MALOLOS), art. 100. The execution of article 5, Title III shall be suspended until the Constituent Assembly meets in session.

In the meantime, municipalities which require spiritual ministry of a Filipino priest may provide for his necessary maintenance.

<sup>148</sup> BERNAS II, *supra* 2, at 12.

<sup>149</sup> M. KALAW, *supra* note 15, at 41.

### E. Freedom of speech and association; right of peaceful petition

Freedom of speech, freedom of the press, the right to association, and the right to petition the government for redress of grievances are all guaranteed by article 20 of the Malolos Constitution. This provided that Filipinos could not be deprived of: (1) the right to freely express their ideas or opinions, orally or in writing, through the use of the press or other similar means; (2) the right of association for purposes of human life, not contrary to public morals; and (3) the right to send petitions to the authorities for the redress of grievances, whether individually or collectively, so long as armed force was not used. The exercise of these rights, however, would be subject to general regulations, and crimes committed on the occasion of their exercise would be prosecuted in accordance with laws.<sup>150</sup>

It is interesting to note that this provision directly influenced the framers of the 1935 Constitution, as admitted by one of its delegates. Freedom of speech, and the right to petition the government for redress of grievances, were guaranteed by the organic acts<sup>151</sup> promulgated by the United States government in the Philippines, quoting almost verbatim the first amendment to the United States Constitution.<sup>152</sup> Nowhere in these provisions, was the explicit recognition of the right to form associations, although this was already recognized in jurisprudence.<sup>153</sup> The 1935 Constitution maintained the freedom of speech and of the press, and the right to petition the government, in virtually identical words as the earlier American provisions;<sup>154</sup> in addition, though, there was the recognition, in a separate provision, of the "right to

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<sup>150</sup> CONST. (MALOLOS), art. 41.

<sup>151</sup> President McKinley's Instructions provided "...that no law shall be passed abridging the freedom of speech or of the press, or of the right of the people to peaceably assemble and petition the government for a redress of grievances...." Section 5 of the Philippine Bill of 1902 was identical to this, as was the corresponding provision in the Philippine Autonomy Act of 1916. Quoted in BERNAS I, *supra* note 1, at 107.

<sup>152</sup> The pertinent portion of the first amendment reads: "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

<sup>153</sup> BERNAS I, *supra* note 1, at 109.

<sup>154</sup> CONST. (1935), art. III, sec. 1, par. (8). "No law shall be passed abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and petition the Government for redress of grievances." CONST. (1973), art. IV, sec. 9, and CONST. art. III, sec. 4 are identical.

form associations or societies for purposes not contrary to law," which could not be abridged.<sup>155</sup> Delegate Laurel, proponent of this new provision, admitted that its source was the Malolos Constitution.<sup>156</sup> The addition of this new provision is thus hardly the "inconsequential occurrence"<sup>157</sup> that Bernas calls it. It is important because it reveals a clear link between the 1935 Constitution and the Malolos bill of rights. Even if the right to form association was already recognized by Philippine jurisprudence, the predecessor of the actual constitutional provision was the Malolos Constitution. The 1973<sup>158</sup> and 1987<sup>159</sup> Constitutions also make explicit recognition of the separate right to form associations. Thus, the Malolos provision survives — in tangible form — to this day.

#### F. Freedom to choose one's domicile; freedom of travel

Article 11 of the Malolos Constitution provided that no Filipino could be compelled to change residence or domicile, except by virtue of a final judgment. Further, Filipinos in full possession of their civil and political rights were granted the freedom to travel abroad, and to transfer residence or possessions to another country, subject to their duties to serve in the military and to pay taxes.<sup>160</sup>

There is no equivalent to this provision in the U.S. bill of rights, probably because the Americans never felt the need to safeguard this right; they were never denied the right to freely change residence. The 1935 Constitution, however, explicitly provided that "[t]he liberty of abode and of changing the same within the limits prescribed by law shall not be impaired."<sup>161</sup>

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<sup>155</sup> CONST. (1935), art. III, sec. 1, par. (6). The right to form associations or societies for purposes not contrary to law shall not be abridged.

<sup>156</sup> IV JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE PHILIPPINES 1277-1281 (Francisco ed., 1961), cited in BERNAS I, *supra* note 1, at 109.

<sup>157</sup> *Id.*

<sup>158</sup> CONST. (1973), art. IV, sec. 7. The right to form associations or societies for purposes not contrary to law shall not be abridged.

<sup>159</sup> CONST. art. III, sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

<sup>160</sup> CONST. (MALOLOS), art. 25.

<sup>161</sup> CONST. (1935), art. III, sec. 1, par. (4).

This was taken to mean that no one could be compelled to change his residence, except in accordance with law<sup>162</sup> — a construction that is reminiscent of the Malolos provision.

The right to travel was expounded on by the 1973 Constitution, which provided that “[t]he liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.”<sup>163</sup> Likewise, the 1987 Constitution provides that “[t]he liberty of abode and of changing the same within the limits provided by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.”<sup>164</sup> Current jurisprudence recognizes that the right to travel abroad is included in this provision<sup>165</sup> — a construction that, again, is reminiscent of the Malolos Constitution.

#### G. Freedom and security of correspondence

Article 12 of the Malolos Constitution provided that correspondence confined to the post office could not be detained or opened by government authorities, except by virtue of an order by a competent court, in which case correspondence could be detained and opened in the presence of the sender. Absent justification for such an order, or when the ground for the justification was proven in court to be unlawful or manifestly insufficient, the aggrieved party was once again entitled to recover damages, per article 13.

Article 12 of the Malolos Constitution has no equivalent in the United States bill of rights, or in the various organic acts governing the Philippines prior to 1935. Freedom and security of correspondence, however, are guaranteed by section 1, paragraph 5 of the 1935 bill of rights, which reads thus: “The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require

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<sup>162</sup> BERNAS II, *supra* note 2, at 329.

<sup>163</sup> CONST. (1973), art. IV, sec. 5.

<sup>164</sup> CONST. art. III, sec. 6.

<sup>165</sup> BERNAS II, *supra* note 2, at 332.

otherwise." This provision, proposed by Justice Laurel, was in order to protect "letters and messages" entrusted to government agencies lest "their privacy be wantonly violated and great harm [be] inflicted upon the citizens."<sup>166</sup> The 1935 provision is repeated in both the 1973<sup>167</sup> and 1987 Constitutions,<sup>168</sup> with the further proviso that any evidence obtained in violation of the privacy of communication and correspondence "shall be inadmissible for any purpose in any proceeding."<sup>169</sup>

#### H. Freedom from arbitrary deprivation of property

Article 17 of the Malolos Constitution provided limits to the government's power of expropriation. Under this provision, no-one could be deprived of property by expropriation except on grounds of public necessity and benefit, previously declared and justified by proper authority. Prior to expropriation, the owner had to be indemnified therefor. The Malolos Constitution also provided that no institution could be established in order to restrict or deprive individuals of their right to own property.<sup>170</sup>

The manifest intent of article 17 is the protection of individual property rights by providing procedural guidelines that had to be followed before the individual could be deprived of what he owned. In essence, therefore, what article 17 protected was the right to due process before individuals could be deprived of their property, although the phrase "due process" is not explicitly mentioned. Thus, the spirit of article 17 is present in the current constitution, which provides that "[n]o person shall be deprived of ... property without due process of law...."<sup>171</sup> Again, the primary source of this is the fourteenth amendment.

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<sup>166</sup> 3 JOURNAL OF THE CONSTITUTIONAL CONVENTION 1034-1035 (Francisco ed.), cited in BERNAS II, *supra* note 2, at 190.

<sup>167</sup> CONST. (1973), art. IV, sec. 4, par. (1).

<sup>168</sup> CONST. art. III, sec. 3, par. (1).

<sup>169</sup> CONST. (1973), art. IV, sec. 4, par. (2); CONST. art. III, sec. 3, par. (2).

<sup>170</sup> CONST. (MALOLOS), art. 32.

<sup>171</sup> CONST. art. III, sec. 1.

The current Philippine Constitution's provisions on expropriation, though, contain elements that are not found in the American bill of rights. The 1987 Constitution also provides that "[p]rivate property shall not be taken for public use without just compensation."<sup>172</sup> Thus, this provision places two limits on the government's power of expropriation: private property must be taken only for "public use," and with payment of "just compensation." Identical provisions are found in both the 1935 Constitution and the 1973 Constitution.<sup>173</sup>

Surprisingly, while absent from the American bill of rights, this two-fold limit is present in the Malolos Constitution. Private property could only be taken on grounds of "public necessity and benefit;" and the expropriation could not take place unless the owner of the private property was previously indemnified. Thus, the explicit limits on the power of expropriation in the Malolos Constitution anticipated succeeding Philippine Constitutions.

## VI. CONCLUSION: HISTORICAL TRANSCENDENCE

In making the claim that constitutionalism in the Philippines began with the arrival of the Americans, constitutional scholars seem to focus primarily on the fact that the Malolos Constitution was never actually in force in the Philippines. Consequently, the rights therein envisioned were never refined or developed through jurisprudence. Legal historians, in starting their analyses from the various organic acts promulgated by the United States, may be said to be justified insofar as these constitutional documents were, in spirit and in language, transplanted from American soil.<sup>174</sup> Thus, the development of these rights through Philippine jurisprudence has a markedly American flavor, especially during the years that the Philippines was a territory of the United States. Today's understanding of these rights, given the entire scope of Philippine jurisprudential history, retains much of that original flavor.

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<sup>172</sup> CONST. art. III, sec. 9.

<sup>173</sup> CONST. (1935), art. III, sec. 1, par. (2); CONST. (1973), art. IV, sec. 2.

<sup>174</sup> BERNAS II, *supra* note 2.

If the Malolos Constitution is read simply as a remnant of the Revolutionary Government, and its provisions are analyzed merely in terms of the concrete political institutions and structures that beset the Philippines at the turn of the 19th century, then this document in truth has no place in the scope of Philippine constitutional history. A more careful analysis shows, however, not only that the same philosophical ideas motivated the framers of the Malolos Constitution and the framers of the American bill of rights, but also that the main ideas present in the Malolos bill of rights are also found in the Philippine Constitutions of 1936, 1973, and 1987. Given these marked similarities, it seems incongruous to simply dismiss the Malolos Constitution.

These similarities suggest that, even prior to the establishment of an American government in the Philippines, the Filipinos — or, at least, their intellectual leaders — had a fairly well developed idea as regards the idea that the power of the government must be balanced and controlled by the freedom of the governed. The emphasis that the Malolos Congress placed on the bill of rights suggests that they were aware of the importance of the constitution as a written instrument that limits governmental authority — in contrast to Sinco's claim that such was not "comprehended in theory and in practice."<sup>175</sup>

Whereas it may have had little direct effect as regards the constitutional tradition of the Philippines, the Malolos Constitution belongs to the same intellectual and democratic tradition as does the present Constitution. The similarities between the Malolos Constitution and the current Philippine Constitution proves that the ideas present enunciated by the Malolos Congress are significant not only as regards the revolutionary milieu, but also with regard to current constitutional thought. The Malolos Constitution, therefore, is a document that undeservedly has been forgotten.

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<sup>175</sup>SINCO, *supra* note 5.