

TRAPS IN THE HAWES-CUTTING-HARE LAW

By JORGE BOCOBO *

I wish to discuss four aspects of the Hawes-Cutting Act which reveal a design to trap and snare our people into irreparably tragic and disastrous situations. I could name other skillful traps, but these four are more than sufficient to arouse the indignation of any intelligent, self-respecting, civilized nation. I will state them briefly:

First Trap. By acceptance of the Bill under Section 17, we Filipinos voluntarily agree to be treated as an inferior and undesirable race, unfit to live in American communities, after the transition period.

Second Trap. If a majority of Filipino voters shall reject the Constitution of the Commonwealth for any reason whatever, that vote shall be irrevocably deemed a rejection of independence at any time. (Section 4). Hence, no matter how a Filipino voter may dislike the proposed Constitution, he would be compelled to vote for it, in order that he may not vote against independence.

Third Trap. By accepting the Hawes-Cutting Bill we voluntarily agree, as one of the essential conditions for the granting of independence, that American citizens and corporations shall have the same rights as Filipino citizens and corporations to acquire public and private land and mines after Philippine independence shall have been recognized. American citizens and corporations will enjoy such right, (a) although the Philippine Republic will be required promptly to pay the United States for all the value of the public lands and mines; and (b) although Filipino citizens and corporations will have no right to hold a square inch of public and private lands in the United States.

Fourth Trap. Under Sec. 16, if any provisions of the Hawes-Cutting Act is held unconstitutional by the court, the rest of the Act will not be affected thereby. Which means that if Senator Copeland's contention that Philippine independence can be granted only by an amendment of the American Constitution and not by an Act of Congress, is upheld by the United States Supreme Court Sec. 10 promising independence after 10 years will be held invalid, but the tariff and immigration provisions will remain.

I shall now discuss these four unjust provisions.

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FIRST TRAP

By acceptance of the Bill under Sec. 17, we Filipinos voluntarily agree to be treated as an inferior and undesirable race, unfit to live in American communities, after the transition period.

Under the Hawes-Cutting Act, as soon as this law is accepted, Filipino immigrants will be treated as coming from those foreign countries which are on the so-called quota-basis. (Sec. 8.) And once independence is recognized, Filipinos will be excluded from America. (Sec. 14).

On the first point (Sec. 8) it should be noted;

(a) That the limitation of Filipino immigrants takes effect at once, that is, upon acceptance of the Hawes-Cutting Act, and before the inauguration of the Commonwealth government.

(b) That although the American flag will continue flying here, our immigrants will be treated as foreigners.

(c) That at all times, Americans will be free to come and reside in the Philippines engage in business, and acquire public and private land.

But the other aspect (Sec. 14) is infinitely worse and more humiliating. If we accept the Bill, we thereby voluntarily agree to be treated, after independence, as an undesirable race not fit to live in American communities, while under the Hawes-Cutting Act, Sec. 10, Americans after our independence shall have been recognized, will be free to live in the Philippines, and acquire public and private lands and mines!

China and Japan have always vigorously protested against the exclusion of their nationals from America as offensive to their national dignity. In fact, this is an outrage that ever rankles in the heart of the proud Japanese people. When in 1924, America passed the law excluding Japanese, there was such a wave of resentment in Japan that when a Japanese young man committed *harakiri* (suicide) to protest against the law, he was honored as a martyr all over the Empire. The Chinese people though a weak country owing favors to the American people, never accepted this unjust treatment. And yet some persons advise our people to accept the law. Has the Filipino race become so spiritually anemic and so devoid of pride and self-respect as to swallow this insult to our nation? Let but every Filipino worthy of his brave and manly forefathers look down deep into his soul, and I am confident this offense to our race will wound him to the quick.

But we are told that we need our laborers in Mindanao. True, but let us pass the law ourselves, forbidding emigration to America. There is a world of difference between being kept out of a neighbor's house, and voluntarily expressing one's desire not to go to that house. In the former case, one is insulted, in the latter, one shows his pride. This was the idea embodied in the so-called "gentleman's agreement" between Japan and America before the exclusion law was passed in 1924. According to that plan, the Japanese government itself of its own accord limited the number of emigrants to the United States.

SECOND TRAP

If a majority of Filipino voters shall reject the Constitution of the Commonwealth for any reason whatever, that vote shall be irrevocably deemed a rejection of independence at any time. (Sec. 4.)

Hence, no matter how a Filipino voter may dislike the proposed Constitution, he would be compelled to vote for it, in order that he may not vote against independence.

Section 4 of the Hawes-Cutting Act provides as follows:

"Sec. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. IF A MAJORITY OF THE VOTES CAST SHALL BE FOR THE CONSTITUTION, SUCH VOTE SHALL BE DEEMED AN EXPRESSION OF THE WILL OF THE PEOPLE OF THE PHILIPPINE ISLANDS IN FAVOR OF PHILIPPINE INDEPENDENCE. * * *

“If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.”

TWO-FOLD PLEBISCITE

It will be seen that a vote in favor of the Constitution shall be deemed an expression in favor of Philippine independence. It is clear that the plebiscite on the constitution carries with it another plebiscite on independence. That is to say, even if a voter should have the most strenuous objections to the proposed Constitution because of certain provisions repugnant to his conscience, yet he will have to vote for the Constitution because otherwise his vote would be taken as against Philippine independence. The unspeakable injustice of this provision consists in that although it was known in Congress that the great bulk of the Filipino people are strongly and unalterably for independence, yet the above clause provides that a vote against the Constitution would also be a vote against independence. In other words, the Filipino voter is compelled to accept the proposed Constitution with all the limitations imposed by Congress which restrictions are, as we have already seen, disastrous to our economic life, offensive to our national dignity, destructive of our autonomy during the transition period and inimical to our freedom of action even after independence. The provision under consideration plainly says to the Filipino people: “You either accept these onerous and humiliating conditions, or you will be deemed to have rejected independence.”

A VIRTUAL COERCION

This is not the way of a noble nation, with altruistic traditions. I am sure it does not represent the sentiment of the American people. It is virtually a coercion on our people. If the supporters of this bill were sincerely desirous of getting a genuine expression of Filipino stand upon independence, why did they not separate the two questions to be put to the Filipino people:—The proposed constitution and the question of independence? And if the sponsors of the bill really wanted an unforced and sincere expression as to whether or not the Filipino electorate voluntarily and freely accepts the economic and immigration provisions, why did they not put that question separately from the question of independence? But no. The shrewd design is discernible. The drafters very well knew that

by putting these two questions together, the Filipino people would be forced to accept the proposed Constitution with the tariff and other unjust and one-sided provisions.

Going further into this matter we know that intelligent and educated voters in the Philippines have definite ideas on what should be provided in a Constitution for our country. For instance, some believe in the presidential system and others in the parliament system of government. Some believe in the unicameral, others in the bicameral system of legislature. Some are for centralization of powers in the insular government, others are for greater local autonomy. However, it is the almost unanimous opinion that the economic provisions of the Hawes-Cutting Act are unfair and unjust and yet they must be included in the proposed Constitution and they must be accepted by the Filipino voters, for otherwise they would be deemed to have voted against independence.

Again: The Hawes-Cutting Act is promising partial independence (not absolute because of military reservations), and yet the question put to a vote of the Filipino people is: Are you in favor of independence? Of course the voters must say "Yes," even though there is only a promise, after 12 years, of only qualified and not absolute independence, and although the Filipino voters prefer immediate and complete independence.

PLAYING WITH OUR DELICATE SENTIMENTS

It is thus clear that the maker of this trap in the Hawes-Cutting Bill was playing with our most delicate sentiments. He believed that our sacred ideal of independence could be the subject of a legislative joker, without meeting resistance and protest from those Filipinos who have their eyes wide open, and who deeply resent any attempt to deal lightly and frivolously with our aspiration for freedom which is enshrined in the heart of the Filipino people.

Every Filipino who realizes that our sacred right to be free is being tampered with should therefore reject the Hawes-Cutting Bill, so that we may not be driven and duped into such a tragic dilemma. We should tell the coming Democratic Congress and President that we are sure they will not deal with our freedom in such a thoughtless manner, and that our freedom which is ours as a God-given right should be granted us at once. Shall we meekly allow ourselves to be trapped into accepting the onerous and humiliating provisions when independence is our inborn,

inviolable, inalienable right? Let us remember what Rizal said that "resignation is not always virtue; it is crime when it nurtures tyranny."

THIRD TRAP

By accepting the Hawes-Cutting Bill we voluntarily agree, as one of the essential conditions for the granting of independence, that American citizens and corporations shall have the same right as Filipino citizens and corporations to acquire public and private lands and mines after Philippine independence shall have been recognized. American citizens and corporations will enjoy such right, (a) although the Philippine Republic will be required promptly to pay the United States for all the value of the public lands and mines; and (b) although Filipino citizens and corporations will have no right to hold a square inch of public and private lands in the United States.

Section 10, pars. 1 and 5 of the Hawes-Cutting Act provides:

"(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

"* * * * *

"(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions, except paragraph (2), in a treaty with the United States."

As I have already shown in my second article, par. 1 of sec. 10, just quoted, makes it an essential condition of independence that the value of public lands and mines shall be promptly adjusted and settled by the Philippine Republic. Though the public domain is the patrimony of the Filipino people, nevertheless we are told that the Philippines can not be independent unless we pay for the enormous value of the public lands. But to cap this injustice, it is also made a condition of our freedom that after Philippine independence American citizens and corporations shall have the same right as Filipino citizens and corporations to acquire public and private lands and mines, while Filipino citizens and corporations will have no right to acquire a square inch of land in the United States.

That the above is the meaning of the law is shown by a careful analysis of sec. 10, par. 1. What are the "property rights" of the United States which must be promptly settled and ad-

justed? According to the Supreme Court of the United States in the case of *Villas v. City of Manila*, (220 U. S. 334, 55 L. ed. 491) these property rights of the United States acquired from Spain consist of "all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain."

Now, as to the second part of the paragraph, what are the existing property rights of American citizens and corporations which shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens of the Philippine Islands?

The words "existing property rights" do not and can not refer to physical property belonging to Americans, but to their right to acquire property. Why? For three reasons:

(1) By the principles of international law, the physical property—lands, buildings, bank deposits, shares of stock, etc.—belonging to Americans must be protected by the Philippine Republic to the same extent as physical property belonging to Filipinos. Therefore, if the words, "existing property rights" of Americans meant only physical property, the provision would be superfluous. There must have been a definite purpose in including the clause, and that purpose is that Americans shall have the right to acquire public and private lands.

(2) It should be noted that the word "existing" is used just before the terms "property rights of citizens or corporations of the United States." The phrase in question can not possibly mean physical property, because it is very evident that such property of Americans on January 17, 1933 (date of enactment of the Hawes-Cutting Act) may be disposed of before Philippine independence, and furthermore, American citizens and corporations might acquire more property after January 17, 1933. In other words, it is absurd to think that Congress intended to protect only the physical property belonging to Americans on January 17, 1933, as that would leave unprotected whatever other physical property may be subsequently acquired; and moreover, there would be no use protecting physical property which, though belonging to Americans on January 17, 1933, is, however, subsequently sold or disposed of.

(3) Under section 2 (p), of the Hawes-Cutting Act, it is provided that under the Commonwealth, "citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof." Therefore, in 1945, Ameri-

can corporations and citizens will have the same civil rights as Filipinos, which civil rights include the right to acquire public and private lands and mines. So that, when independence comes (if at all) 12 years from now, the "existing property rights" of Americans will consist, among others, of the right to acquire public and private lands and mines, "to the same extent as Filipinos, in the language of Sec. 10, par. 1.

As to the non-impairment of "property or rights" of Spaniards after the ratification of the Treaty of Paris, there is no analogy, because:

The word "existing" does not appear in the Treaty of Paris, and the word "existing" in the Hawes-Cutting Bill makes a vital difference as I have just demonstrated.

(2) Section 10, par. 1, of the Hawes-Cutting Bill says that existing property rights of Americans shall be acknowledged, respected and safeguarded "to the same extent as property rights" of Filipinos. The Treaty of Paris merely declares that the cession "can not in any respect impair the property or rights" of Spaniards and other nationals. Said Treaty does not place the Spanish on an equal footing with Filipinos and Americans as to their property rights. It merely protects the Spaniards against confiscation, violence, etc. On the other hand, the Hawes-Cutting Bill uses the phrase, "to the same extent as property rights" of Filipinos, which means that property rights of Americans shall not be any less in any particular, than those of Filipinos. And what are these "property rights" of Filipinos? One of them is to acquire public lands and mines.

Thus it is made plain that the Hawes-Cutting Act, if accepted by us, will bind our country to a one-sided provision that not only makes us pay for public lands which rightfully belong to our race, but also after the recognition of independence—opens our public and private lands to American citizens and corporations, while Filipinos will be excluded from America and will have no right to acquire lands there. A simple statement of the legal provisions bears its own condemnation. Shall this nation of ours show weakness and moral cowardice by voluntarily sanctioning such an outrageous treatment? The supporters of the Hawes-Cutting Bill would deliberately allow such an unspeakable injustice to be perpetrated. Would that be in keeping with our pride as a civilized and enlightened nation? Shall we allow ourselves to be dealt with as an African tribe? Some people say "Yes," but I emphatically say "No, and a thousand times No." For I can not bear to see our country stultify and degrade

itself. After we have shown in the Revolution that we are conscious of rights as a people, we who oppose the Hawes-Cutting Bill want, with the help of God, to be worthy of the glorious traditions of a self-respecting dignified race!

FOURTH TRAP

Under Sec. 16 if any provision of the Hawes-Cutting Act is held unconstitutional by the courts, the rest of the Act will not be affected thereby. Which means that if Senator Copeland's contention that Philippine independence can be granted only by an amendment of the American Constitution and not by an Act of Congress, is upheld by the United States Supreme Court, Sec. 10 promising independence after 10 years will be held invalid, but the tariff and immigration provisions will remain.

Those who have read the newspapers during the Senate discussion of the Hawes-Cutting Bill last June and December, will remember that Senator Copeland filibustered for several days, giving argument after argument and citation after citation to support his contention that Congress has no power to grant Philippine independence, and that only an amendment of the Constitution can legally declare the Philippines independent. He cited discussions at the Federal Convention of 1787, quoting Governor Randolph in his favor. He also cited utterances of Washington and Jefferson in 1792. He likewise cited a well-known jurist and author, Story, whose book on the Constitution is a classic. He also cites the well-known "Insular Cases" decided by the United States Supreme Court. His theory has stirred widespread interest in America, and many newspapers and distinguished lawyers have taken it up favorably. The late Judge Williams, well-known lawyer who lived many years in the Philippines, wrote able essays upholding the proposition.

Now, although we Filipinos disagree with Senator Copeland's theory, yet it will be admitted that there is a possibility, by no means remote, that American retentionists whose interests will be adversely affected by Philippine independence will raise the question before the United States Supreme Court. And who can tell that tribunal's decision would be on so debatable a legal question!

Now, then, if the Supreme Court should uphold Senator Copeland's theory, by declaring the independence provisions of

the Hawes-Cutting Act unconstitutional and void, what would happen? Section 16 gives the categorical answer:

“Section 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.”

According to that section, then, if the independence provisions of Sec. 10 are held invalid by the Federal Supreme Court, the remainder of the Act will remain intact. And what is the remainder of the Hawes-Cutting Act? The one-sided economic immigration provisions. So that while we would lose political independence, the limitation of our exports to America and the exclusion of Filipinos from the United States would continue.

What, then, should be done? We should simply ask for immediate and complete independence, so that in case such independence granted by Congress is held unconstitutional, we would not lose the American market for our products. Such a proposition is a measure of foresight and prudence and self-defense. On the other hand, under the Hawes-Cutting Bill we take the imminent risk of losing both our independence and our economic well-being.

DESTINY

Our sacred ideal of immediate independence, temporarily disregarded by some misguided countrymen, again surges with increasing might and potency, to stir the national spirit to its very depths, so that we may frustrate the sinister design and spurn the unspeakable injustice and outrage perpetrated by the Hawes-Cutting Bill, and insist with the undaunted spirit of the Revolution, upon our demand for the immediate restoration of the Philippine Republic. For to many of us, that Republic, which was the consummate fruition of all that is noble in our history and in our character as a race, is not dead. It lives in our hearts, palpitates in our beings, and hallows and elevates the aspirations of our country to achieve that greatness which is hers in the march of civilization. Every year that passes in which we continue to be under an alien rule, every year that goes by in which the resurgence of the Philippine Republic is kept down and suppressed by foreign domination, is to our people a reiteration of a grievous wrong.

For this reason, what we demand is not a mere promise which experience shows will not be fulfilled, but an actual and present achievement of national freedom. Our right to live our own national life is so sacred and is so closely bound up with our national self-respect that our demand for immediate freedom can not be satisfied with mere promises.

A policy of weakness, of surrender, of defeatism, or resignation can lead to nothing but moral degradation, economic suffering and social chaos for our country. But if we know how to stand by and manfully and unyieldingly insist on our right to be free at once, we shall surely fashion our own glorious destiny. It is only thus that we may see the fulfillment of Rizal's faith that God, who has protected other nations, will surely not forsake our people.