A CONSTITUTION FOR THE PHILIPPINE COMMONWEALTH

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(Continued from the July Number)

The Legislature

A unicameral legislature is advocated. It is believed that this system removes the anomaly of the present scheme of two houses, the senate and the house of representatives, both representing the same constituency, the people. Bicameralism is appropriate for a federal state or a state where different estates exist. The Philippines is neither. Our country is essentially unitary. We have no established aristocracy which needs a separate representation for its vested interests. A second chamber in a unitary state, as in the Philippines, is a superfluity and an extravagance. Worse than that, it is an attempt to rescue an emblem of class distinction.

Some outstanding nineteenth-century writers, it must be admitted, spoke highly of the check offered by a two-chambered system. Among them may be mentioned, Mill, Maine, Lecky, and the late Lord Bryce. But most modern writers of note, such as Laski, McBain, Beard, Croly, Dealy, and others, besides experienced executives in the United States, and research organizations, such as the National Municipal League, are unanimous in their insistence for a single-chambered legislature.

The most important republic established as a result of the World War is Germany. Although its legislative body is bicameral in form, it is unicameral in essence. (This discussion refers to the law and practice before the Hitler regime). This is so in spite of the federal nature of the German Republic. The Reichsrat does not function as an upper legislative chamber. "Its duty is to assist in the process of legislation rather than to share in it upon equal terms; and its particular task is to see that the point of view of the states is represented when national laws are under consideration." Its functions include that of approving bills to be presented by the Cabinet in the Reichstag, the right to exercise a "suspensive veto" on ordinary laws passed by the Reichstag, and the right to demand a referendum of amendments to the constitution. (Blachly and Oatman, The Government and Administration of Germany, p. 50). These powers are more or less exercised by our executive or may otherwise be provided in our constitution. With re-

spect to the Reichsrat's power over the budget, that of passing over it before it is submitted to the Reichstag, that power may be or is exercised by the Council of State which is in a better position to exercise it. As a matter of fact Oppenheimer describes the Reichsrat as a mere "advisory council" to make suggestions, to warn, and to delay.

Of the older countries of Europe, Norway, Bulgaria, and Greece are exponents of the principle of unicameralism. It is needless to give a list of the new European states which have adopted unicameralism. Among them are Finland, Esthonia, Latvia, modern Turkey, and Yugoslavia. We should point also to Spain which definitely abandoned bicameralism two years ago when she became a republic. The Irish Free State has recently voted for the abolition of its senate, effective next year 1935. No wonder that Professor McBain remarks: "If recent constitutional developments be looked at in the large, it is probably accurate to say that the slow sweep of events is in the direction of single chambers. For in practically every instance the second chamber under the new governments is, in the matter of powers, not coordinate with but subordinate to the other and primary assembly. Cabinet government makes this almost inevitable. When a ministry is responsible to two coequal bodies and the two bodies disagree, one or the other becomes an intolerable nuisance; and responsibility becomes a serious joke—both for the ministers and for the country."

We should also point to England where since 1911, the House of Commons has become practically the English Parliament, and the House of Lords a mere shadow of a legislative chamber divested of initiative and of real power to check the other chamber. Writing in 1917 about the Act of Parliament of 1911 which brought about the emasculation of the House of Lords, Sir J. A. R. Marriott, said: "The Parliament Act was the deathblow to the dignity and to the efficiency of the House of Lords. To all intents and purposes we have been living, for the last six years, under a unicameral legislature." England has in fact been a unicameral country for the last 24 years. In 1917 after the House of Lords had been shorn of its powers, a committee headed by Lord Bryce was appointed to find a way of reforming the second chamber and of determining the proper work of such chamber. That committee rendered a report in the spring of 1918, which has been since then shelved and left unacted, apparently because it was not convincing enough. However, it is interesting to note that the report never recommend-

ed a reformed second chamber equal in power as the other chamber. In other words, it did not recommend a return to bicameralism. Its recommendation was limited to a proposal to create a body of eminent and able persons, non-partisan in nature, with revisionary powers indeed but simply advisory in force. That report runs partly as follows:

"It was agreed that a Second Chamber ought not to have equal powers with the House of Commons, nor aim at becoming a rival of that assembly. In particular, it should not have the power of making or unmaking Ministries, or enjoy equal rights in dealing with finance. This was prescribed not only by long-established custom and tradition, but also by the form of our Constitution, which makes the Executive depend upon the support of the House of Commons, and would be seriously affected in its working by extending to a Second Chamber the power of dismissing a Government.

"All precautions that could be taken ought to be taken to secure that in a Reformed Second Chamber no one set of political opinions should be likely to have a marked and permanent predominance, and that the Chamber should be so composed as not to incur the charge of habitually acting under the influence of party motives.

"The Second Chamber should aim at ascertaining the mind and views of the nation as a whole, and should recognize its full responsibility to the people, not setting itself to oppose the people's will, but only to comprehend and give effect to that will when adequately expressed.

"It should possess that moral authority which an assembly derives not only from the fact that its members have been specially chosen to discharge important public duties but also from their personal eminence, from their acknowledged capacity to serve the nation, and from the confidence which their characters and careers are fitted to inspire."

The efficiency of the English Parliament during the World War, its ability in warding off radicalism so rampant today in Europe, and its apparent success in leading England to recovery from the present world-wide economic depression, are not empty theories but cold factual proofs that a *single democratic chamber* can be an admirable agency of practical government, capable of running with the least amount of friction and unnecessary delay.

The unicameral system in Norway is unique. It is one of the oldest and has produced one of the most stable and efficient legislatures in the world. It is called the *Storting*, which has two divisions, the *Lagting* and the *Odelsting*. Every law is proposed in the *Odelsting*. If passed it is sent to the *Lagting* who may either approve or reject the same. If it rejects it, the *Lagting* returns the same to the *Odelsting* with its comments. The latter may either drop the law or approve it with or without any change. Should it be rejected again by the *Lagting*, the *Storting* (the whole body) may meet in joint sessions and pass it by a two-thirds vote. From among its 150

members, the *Storting* elects one-fourth (38) to form the *Lagting*, and the remaining three-fourths form the *Odelsting*.

If an advisory body on legislation is needed in the Philippines, if it is to be similar to that proposed in the Bryce report of 1918, let it be the Council of State. It will have the further advantage of being a more responsible organization than a purely non-partisan group, and at the same time may be constituted by the best men that the party in power can select. It will have something of the composition of the *Lagting* in the legislature of Norway because it includes in its membership persons selected by the National Legislature out of its own members, but it will be an improvement on the Norwegian device because some of its members may be recruited outside.

In a system of government, such as ours, checks on hasty and arbitrary legislation are offered more effectively by the executive and judicial departments than by a house of the legislature itself. The veto power of the executive is a potent brake on legislative carelessness. A judicial statement of the reasons of the grant of this power runs thus: "There are, in constitutional governments, two fundamental theories upon which the grant of the power of vote rests: First, to preserve the integrity of that branch of the government in which the vetoing power is vested, and thus maintain an equilibrium of governmental powers; second, to act as a check upon corrupt or hasty and ill-considered legislation. These theories have entered into all debates touching the power * * *" (People v. Councilmen of Buffalo, 20 N. Y. Supplement, 51, 52.)

Should an oppressive piece of legislation escape the executive knife, the judiciary, which is usually the most conservative agency of a democracy, may be invoked to nullify it. And generally the due process clause of the constitution, except in rare instances and during times of great emergency, may be brought into play for the purpose of discarding from the statute books any measure which might arbitrarily deprive or tend to unreasonably deprive a person of his life, liberty, or property. The elasticity and breadth of the due process clause has been the greatest single bulwark against dangerous radical schemes contrived by American bicameral legislative bodies. Professor Kales of Northwestern University speaking of this role of the supreme court and of the proper selection of judges said that "success in selecting such men has established the rudiments of a second chamber which is designed to protect property." (Unpopular Government in the United States, p. 218).

But check is at best merely a negative virtue. It is not a constructive quality. The deadlocks of a bicameral chamber are often extremely wasteful. We have only to recall the protracted disagreement between the Philippine Commission and the Philippine Assembly some twenty years ago to realize the truth of this statement. In periods of stress, in times of economic depression, what is most needed is action, quick action. A unicameral legislature obviously lends itself more readily to this demand than a two-chambered body.

This discussion of the merits of unicameralism need no longer be prolonged. Suffice it to say that the trend to unicameralism is noticeable all over the world. This is possibly the inevitable result of Democracy's abhorrence to meaningless distinctions.

The Judiciary

The provisions on the judiciary should follow closely that part of the United States Constitution on the subject in respect to simplicity. Only the supreme court should be directly organized, the organization of lower courts to be left to the legislature. This plan is in accord with modern judicial reforms which advocate for a flexible judicial organization. It is a system which makes for a unified judiciary. It enables the legislature to adopt a satisfactory scheme of distribution of cases among the different courts which it may organize. A statute may establish an intermediate court of appeals for such cases as may now be determined by the present Supreme Court but which are not placed by the Commonwealth constitution under the jurisdiction of the supreme court. It will also be possible to enact statutes giving courts of first instance final authority to decide cases coming from justice of the peace courts, except those involving title to real property. A Philippine statute which gave that power to these courts was held unconstitutional under the rigid provisions of the present organic laws, on the ground that it diminished the jurisdiction of the Supreme Court.

The jurisdiction to be granted expressly to the supreme court should be confined to what may really be considered cases properly and essentially determinable by the highest court of the state. It is believed that this will so materially reduce the number of cases reaching the Supreme Court as to enable that body to give more thought to their decisions. The result will be an enhancement of its prestige, a position devoutly to be wished for an independent Philippines.

The constitution should fix the number of justices of the Supreme Court in order to prevent packing of the court by legislation. The limitation of court membership to seven is, of course, productive of economy. Moreover, the mediocres will have less chance of being appointed members of a court with a restricted membership. It is strange that in the statements made by delegates in the Convention and published in the daily press with respect to measures protective of the independence of the judiciary, a provision fixing the number of justices of the supreme court seems to have been entirely overlooked. And yet some writers have pointed out that the absence of such a provision in the American Constitution may enable the executive and the legislative authority to thwart independent action on the part of the judiciary with respect to serious measures. For instance, it has been hinted that Congress would have readily increased the membership of the United States Supreme Court had this body showed signs of disinclination to uphold the validity of the National Recovery Act and similar radical measures.

Two new features should be incorporated in the system embodied in the Commonwealth constitution. One should make the chief justice the administrative head of the lower courts. This is the position of the chief justice of the United States Supreme Court, who has the authority to make temporary assignments of federal judges to districts other than their own in conformity with law. This system will remove judges entirely from the executive department. Under the present laws, the Department of Justice performs this work of supervision over the lower courts. When we consider that the head of the Department of Justice is primarily a political officer, his position as administrative head of the lower courts is not specially protective of the independence of the judiciary. Moreover, the Secretary of Justice is the legal officer of the government and directs the cases before the lower courts in which the government is interested. His position as administrative head of the lower courts is, therefore, anomalous, and not conducive to the best interests of the administration of justice. In the United States, therefore, the head of the Department of Justice serves only as the legal officer of the government, supervising district attorneys and marshals; but the supervision of courts is intrusted to the Chief Justice of the Supreme Court and to the conference of Federal judges. It is believed that this system secures more independence to the judiciary.

The other feature is a provision which should vest in the Supreme Court the authority to enact the rules of practice, pleading, and procedure for all courts. They should, however, be subject to the approval of the Legislature. This feature is modelled after the English law. Rules of court procedure are essentially technical and should logically belong to the courts to formulate. Legislative sanction, however, is considered necessary because the power to pass rules is inherently legislative in nature. While the present rule-making powers of courts are to be used only to supplement rules enacted by the legislative authority, the power here suggested includes the entire rule-making power, giving the court full and exclusive authority to initiate the formulation of rules of practice, pleading, and procedure. Should these rules go beyond the bounds of procedural rules into the region of substantive law, the Legislature has full opportunity and right to disapprove them in whole or in part. Judicial reform in the United States favors this system. Certainly, it is undeniable that courts are in a better position than any other body to judge and adopt the most adequate rules of procedure.

The appointment of justices of the supreme court and lower courts should be exclusively vested in the chief executive. In addition to what has been said about the advantages of this method, it might not be out of place to quote here the statement of Judge Simeon E. Baldwin, eminent jurist, Yale Professor of law, author, once Chief Justice of Connecticut, then Governor of that State, and President of the American Bar Association:

"The American experience seems to indicate life tenure and executive nomination, with some suitable provision for securing retirement at a certain age, as likely to secure the best judges of the highest court. For the lower courts the plan of executive nomination is safer than that of party nomination. A man acts carefully when he is the only one whom the public holds responsible for what is done." (The American Judiciary).

A plan which allows the supreme court to recommend those to be appointed judges of lower courts is believed likely to involve that high tribunal in petty intrigues and unnecessary maneuvers on the part of persons hungry for jobs. The time of the court will be taken up by lobbyists working for appointments.

Power of Removal

The power of removal is implied from the power of appointment. This is an inherent principle in the Federal constitution and in a centralized system of administration which the Com-

monwealth constitution should provide. The chief executive is thus empowered to remove all officers appointed by him, limited only by those restrictions found in the constitution.

But aside from the implied power of removal, the constitution should provide for the impeachment of the superior officers. These are the President of the Commonwealth, the vice-president, and the justices of the supreme court. The Supreme Court should be the body authorized to try impeachments instead of the senate. It is submitted that this change assures greater impartiality and less partisanship in the determination of impeachment charges. Moreover, as the Legislature acts as prosecutor, it is but fair that another department should act as the judge.

The inclusion of impeachment proceedings is absolutely necessary under the Commonwealth. Under the Jones Law, the governor-general, the vice-governor, and the justices of the supreme court may be removed by the President of the United States. This power does not obtain during the Commonwealth. It thus becomes necessary that a method of removal for these officials should be adopted. The system by impeachment is considered more conservative than the recall. It is less susceptible to passion and petty politics and more conducive to deliberation.

The Vice-President

This office should be so organized as to continue the status and functions of the present office of vice-governor. Our own experience shows that the office of vice-governor, which is the equivalent for the Philippines to the office of vice-president of the United States, is relatively more useful than that of vice-president of the United States. The vice-governor heads the department of public instruction. The constitution should preserve this arrangement and give the President of the Commonwealth discretion to select the department in which to place the vice-president. This provision enables the President to shift the vice-president from one department to another according to the special interest and preparation or training of the man elected vice-president. It may be necessary to place him as head of a non-political department, such as the department of public instruction. This the President may do.

The Administrative Officers

The constitution should place all the administrative officers and technical or clerical positions under the civil service system. The intention is to adopt the principles and practices

of the English civil service system, which is considered one of the best in the world. To accomplish this end, eligibility to all administrative positions is to be based only on merits to be determined by examinations, competitive when practicable, either for entrance or for promotion. Under such a situation, the "spoils system" may be avoided, and the idea of an office being a public trust will become more firmly established not simply in theory but also in fact.

From the point of view of the chief executive, the civil service here contemplated will enable him to devote more of his time and attention to the more important tasks of the government, instead of being absorbed in pleasing henchmen who desire appointments for various positions for which they are not qualified. Former President Harrison said of appointments to the Federal service (where senatorial confirmation is often required and where in many cases civil service eligibility is not essential) that the President of the United States spent four to six hours daily during the first half of his term in hearing applications for offices. The chief executive will simply be harassed by a certain class of persons who do not have much real respect for the principle that a public office is a public trust and should, therefore, never be used to reward partisan service.

Natural Resources

The constitution should embody the following principles:

1. That land and other natural resources constitute the exclusive heritage of the Filipino nation.

2. That the existence of big landed estates is one of the causes of economic unequilibrium and social unrest.

3. That the multiplication of landowners by the subdivision of land into smaller holdings is conducive to social peace and individual contentment, and has been the policy adopted in most civilized countries after the World War.

4. That the encouragement of ownership of small landholdings destroys that institution so deeply entrenched in many parts of the Philippines known as *caciquism*. It is preventive of absentee landlordism, an institution which springs directly from the establishment of big landed estates and has, time and again, served as an irritant to the actual toilers of the soil.

Land tenure has a social and political significance. One of the first acts of the government of the United States in the Philippines was to acquire what is known as the Friar lands in order to prevent the rise of serious social unrest. This measure

constitutes an important precedent. (See Act of Congress of July 1, 1902).

In a society where large landed estates prevail, a sharp and well-defined class distinction is noticeable. On the one hand, we have the wealthy landowners who generally spend much of their time in cities; and on the other hand, we have the landless who are quite often reduced to a condition of serfdom. This state of things obtained in most countries of the ancient world, specially in Rome where the nobility built up latifundia in suitable regions. In modern times many a social conflict has been caused by similar inequalities in land tenure. England has during the last 20 years been prominent in the movement of breaking up large landed estates. All over Europe there has been since the World War a steady trend toward the establishment of small holdings. In some countries, such as Germany, Jugoslavia, and Spain, this movement is directed by constitutional provisions; while in others it is provided for merely in statutory laws. In South America the existence of large *estancias* or *haciendas* may be considered as the primary cause of the failure of the development of real democracy. The large proprietors constitute the bulk of the conservative party. Their conservatism reënforced by a close relationship with the clerical group has resulted in a strong combination which has dominated most of the history of South America. The landless constitute the peon and tenant group. They count for nothing in social and political movements because of their poverty and ignorance.

International complications have resulted from the existence of alien landholdings in a weak country. Because of this danger, it is best that the right of aliens to acquire land should be closely and strictly controlled and regulated. An example is afforded by the case of Texas. This was originally a province of Mexico. In order to secure its rapid settlement and development, the Mexican government offered free land to settlers in Texas. Americans responded more rapidly than Mexicans, and soon they organized a revolt against Mexican rule and then secured annexation to the United States. A new increase of alien landholding in Mexico has brought about a desire to prevent a repetition of the Texas affair. Accordingly the Mexican constitution of 1917 contains serious limitations on the right of aliens to hold lands in Mexico. The Filipinos should profit from this example. Now is the time to provide against the danger of alienholdings while we are still under the protection of the United

States. An increase of alien landownership invites unnecessary and annoying international troubles.

Public ownership or control of a country's natural resources such as minerals, timber, and all natural sources of power is the aim of modern legislation. The German and Mexican constitutions place particular emphasis on this subject. In the United States, this movement for the conservation of natural resources has been going on since the administration of President Theodore Roosevelt. At present it has become so marked that millions of dollars are spent for the preservation of forest lands, and tireless efforts may be observed to conserve the mineral resources of the country. Water power and industries dependent on it have become major issues in politics.

The above explanation shows the need of providing carefully in the constitution of this country such control of our lands and natural resources so that the evils of a landed aristocracy may be prevented and the danger of international conflict caused by alien landholdings may be averted when we shall be independent. Right now the beginnings of social unrest caused by large landed interests are already noticeable in various parts of these Islands. Corporate combinations are being established to control large domains. We should not wait till matters become very serious. We should bear in mind that agrarian troubles have often resulted in general discontent and civil war.

Education and National Defense

The constitution should provide for the maintenance of free public education for a minimum period of time, say seven years. The term elementary education should not be used because it is indefinite; it may be four years only or a longer period.

The University of the Philippines should be assured of permanency. To go into more minute provisions would be violating the requirements of a good constitution.

The Legislature should be given full discretion to provide for national defense. Details are not to be expressed in the same manner that details on national defense have not been provided in the Constitution of the United States. It is believed that the form, character, and demands of a military organization vary every few years that the best policy should be to leave to the Legislature and the President of the Commonwealth discretion on such matters.

The office of the Insular Auditor is expressly referred to by the Philippine Independence Law. The general provisions about

this office found in the present organic law should be preserved. The Auditor should be assured of independence from the Executive by giving him a definite term of office and by placing him outside of the executive power of removal. This will be in line with the principle adopted by the Federal law creating the office of comptroller. The Auditor may be removed only by resolution of the Legislature.

Amendments

The proposed procedure for amending the constitution follows that provided in the New York state constitution and fifteen other State constitutions. Proposals for amendments have to be approved by two consecutive legislatures, and after that they shall be submitted to the people for ratification. The whole procedure may last three years. When a constitution is brief and includes nothing but fundamental provisions authorities are of the opinion that the method of amending it shall be more difficult than when the constitution is detailed and containing matters appropriate only for statutes. Although greater facilities for amending a constitution do not always result in frequent changes, it is believed that a more difficult procedure tends to secure greater stability in and higher respect for the organic law.

The flexibility of a constitution does not entirely depend on the ease with which it may be amended. The American constitution, which is the model of our draft, is capable of being adjusted to changing conditions because the generality of its terms permits a wide range of judicial construction. Let us also bear in mind that *Police Power,* as understood in American constitutional law, is an inherent part of our system. This power may be put forth, as Mr. Justice Holmes tells us, in aid of "what is held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."