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THE REPEALABILITY OF THE PHILIPPINE INDEPENDENCE LAW

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I

FUNDAMENTAL CONCEPTS

Concretely, the subject of this thesis is, May the Tydings-McDuffie Law [1] be repealed by Congress once it has been accepted by the Filipino people? The primary meaning of the word "repeal" as used in speaking of the repeal of a statute is, as its etymology imports, the recalling or revoking of the statute by legislative act. The repeal may be total or partial.

It is a fundamental concept of American constitutional law that the legislature may not pass irrepealable laws. The basis of this limitation is the fundamental maxim, "Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quae abrogationem excludit ab initio non valet."

"Acts of Parliament," says Blackstone, "derogatory from the power of subsequent Parliaments, bind not." Under English constitutional law, this rule is true because the legislature, being in truth the sovereign, is of equal, always absolute authority; it acknowledges no superior upon earth, which the prior legislature would have been if its ordinances could bind a subsequent Parliament.[1a]

Although this reasoning does not apply in all its particulars to American legislatures, the principle applicable in each case is the same. The true meaning and scope of the principle as it is understood in the United States have been explained by the great writer and jurist, Judge Cooley, as follows:

"The constitution, in conferring the legislative authority, has prescribed to its exercise any limitations which the people saw fit to impose, and no other power than the people can su-

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[1] This discussion referred originally to the Hare-Hawes-Cutting Law.

[1a] I Blackstone, Commentaries, p. 90.

peradd other limitations. To say that the legislature may pass irrepealable laws, is to say that it may alter the very constitution from which it derives its authority; since, in so far as one legislature could bind a subsequent one by its enactments, it could, in the same degree, reduce the legislative power of its successors; and the process might be repeated, until, one by one, the subject of legislation would be excluded altogether from their control and the constitutional provision that the legislative power shall be vested in two houses would be to a greater or less degree rendered ineffectual." [2]

The purpose of this limitation can be easily discerned. Since the business of government is in great measure exercised and put into effect by means of laws, it is vital to the public welfare that the legislative power be not fettered with restrictions. It should have as it has at all times ample authority to change, alter or modify statutes, the continued operation of which would entail hardships upon the people, or would prevent the carrying out of policies which public necessity requires. As the leading case on the subject reasons out, "If in any line of legislation a permanent character could be given to acts, the most injurious consequences would result to the country. Its policy would become fixed and unchangeable on great national interests, which might retard, if not destroy, the public prosperity." [3]

II

CONSTITUTIONAL LIMITATIONS

Like most rules, however, the principle that the legislature may repeal any law is subject to certain limitations. Some authorities indicate that these limitations are found in the constitution. Thus, in the cited case of Bloomer vs. Stolley, supra, the following doctrine is enunciated, "Every legislative body, unless restricted by the constitution, may modify or abolish the acts of its predecessors." To almost the same effect, our Supreme Court also said, "Unless restricted by superior authority, the legislative power of any government has plenary power to enact or repeal laws." [4] And Professor Sinco of the University of the Philippines College of Law went even fur-

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[2] Cooley, Constitutional Limitations, 8th ed. Vol. I, p. 246.

[3] Bloomer vs. Stolley, 5 McLean, 158.

[4] Duarte vs. Dade, 32 Phil. 36.

ther than these general statements of the law when he said "The only limitation of the principle prohibiting the enactment of irrepealable laws is that limitation which is clearly expressed in the constitution." [5]

The constitutional limitation of the power of the legislature to repeal laws often cited by writers of constitutional law is the provision in the United States Constitution prohibiting the impairment of the obligations of contract. It reads as follows: "No State shall * * * pass any * * * Law impairing the obligations of contract." [6]

Does the acceptance of the Tydings-McDuffie Act by the Filipino people make the law a contract which Congress may not impair? In the first place, a close examination of the provision will reveal that the constitutional inhibition against the passage of laws impairing the obligations of contract are applicable expressly to the States of the United States and not to the Federal government. As a matter of fact, Congress has full power and authority to pass any law directly or indirectly impairing the obligations of contract.[7]

In the second place, the contracts protected by the constitution from being impaired are confined exclusively to those respecting property right,[8] where the Tydings-McDuffie Law refers to governmental relations.

In the third place, municipal corporations are not included in the contract clause of the constitution because with respect to these corporations, the legislative power has full and plenary control either to modify, alter or abolish their charters as it may see fit. Such corporations are mere creatures of the legislative will; and inasmuch as all their powers are derived from that source, it follows that these powers may be enlarged, modified or diminished at any time, without their consent and even without their notice. They are but sub-divisions of the State, deriving their existence from the legislature.[9]

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[5] Sunday Tribune, July 23, 1933.

[6] Art. I Sec. 10 Cl 1, U. S. Constitution.

[7] 12 C. J. 987.

[8] Malcolm, Constitutional Law of the P. I.

[9] Laramie County vs. Albany County, 92 U. S. 307, 23 L. ed. 552; Russell vs. Reed, 27 Pa. 176.

The proposed commonwealth of the Philippine Islands, although it is clearly not a municipal corporation, stands in an analogous position with respect to the power of Congress over it that a municipal corporation has to its creator, the legislature. For with respect to the Philippine Islands, the powers of Congress are almost unlimited.[10]

III

THE NATURE OF THE ACT TO BE REPEALED

The constitutional limitation cited not being applicable, is there any legal consideration why Congress may not repeal the Tydings-McDuffie Act? In a lucid exposition that he wrote on the Independence Law, former Justice Fisher of the Philippine Islands Supreme Court made the following affirmative observation:

"A limitation upon the power of repeal exists of necessity, it is believed, when the effect of the valid exercise of legislative power is the creation or destruction of status." And to demonstrate his contention, he cited the following instances:

(1) A legislative divorce once granted by valid legislative act may not be annulled and the status of marriage re-established by subsequent repeal.

(2) The retrocession of the District of Columbia by Congress in 1848 to Virginia may not be annulled by repeal of the statute by which the retrocession was accomplished.

(3) Congress may not restore Cuba to the position it occupied after the relinquishment of Spanish sovereignty over the Islands by repeal of the Platt Amendment and of the Permanent Treaty which created Cuba's present status.

(4) The attributes of sovereignty which Texas surrendered to the United States in consenting to become a State of the Union may not be re-called by legislative repeal of the Act of cession merely because the surrender of sovereignty was not complete.

From this Justice Fisher argues, "If it be conceded that a complete relinquishment of sovereignty by legislative act, valid by domestic constitutional law of the relinquishing power, cannot be recalled by repeal, must it not be equally true that a partial relinquishment of such a character as to create a

[10] Sinco, Philippine Government and Political Law, 2nd Edition, p. 36.

semi-sovereign political entity capable of sustaining relations with other States, must likewise be immune to re-call by repeal?" [11]

The issue raised by Justice Fisher is fundamental. It goes to the very root of this discussion. Is partial relinquishment of sovereignty legally recognized by the constitutional law of the United States? To answer this question properly, it is necessary to face squarely the issue of whether sovereignty is divisible or not.

Perhaps there is no conception that has been the object of more controversy among authorities than that of sovereignty. A brief sketch of the history of the development of this concept will readily prove the truth of this fact. In 1577, Bodin introduced the term sovereignty into political science as "the absolute and perpetual power in a State," and may not be constitutionally restricted. A century later, Pfufendorf, while agreeing that sovereignty was the supreme power in a State, maintained that it was not an absolute power and may well be constitutionality restricted. Still later, Locke paved the way for another conception of sovereignty according to which the State itself is the original sovereign and not the King or Monarch. It is from this sovereignty that all supreme power of the government are derived. In the eighteenth century, matters changed again. The fact that several hundred reigning princes of the Member-States of the German Empire had in practice, although not theoretically, become more or less independent since the Westphalian Peace enforced the necessity upon publicists of recognizing between absolute, perfect, full sovereignty, on the one hand, and on the other, a relative, imperfect, not full sovereignty. By this distinction, the divisibility of sovereignty was recognized.[12]

Undoubtedly, in International Law, the great weight of authority leans very heavily in favor of the divisibility theory of sovereignty. The reason is simple. International Law proceeds by the deductive method. It recognizes facts as they exist and takes account of them as they are. And since there can be no doubt that there are, as there had been in the past, countries whose situations lie midway between absolute independence and complete subjection, international law has no recourse but to recognize these situations of reality and to call

[11] Sunday Tribune, July 16, 1933.

[12] McNair's edition, Oppenheim, International Law, sec. 65-69.

them semi-sovereign, part-independent, client states, etc., according as each writer sees these terms best fitted to describe the status thus presented.

Under American constitutional law, the issue of the divisibility of sovereignty is also a moot question. One school of thought, at the head of whom stand Harold J. Laski and L. Duguit, uphold the so-called pluralistic theory of sovereignty according to which sovereignty is essentially a divisible faculty as shown in the United States by the distinct and separate state sovereignty and National sovereignty.

Willoughby, one of the most truly authoritative writers on public law in the United States, in criticizing this pluralistic theory, says that this view does not embody the purely juristic conception of sovereignty. They are but echoes of the attempts of international law writers to reduce the terms Semi-Sovereignty or Part-Sovereignty to definite juristic meaning, a task which he calls a hopeless one. Thorpe also points out that the terms "State sovereignty" and "National sovereignty" found in decisions of courts, and upon which the pluralists in the United States base their contentions, do not really refer to sovereignty as such but to government or the exercise of sovereign powers.[13]

1. *The True Concept of Sovereignty*

Among discriminating writers on public law, a distinction is drawn between sovereignty and the exercise of sovereign powers. Sovereignty, according to these careful writers, is "the supreme legal will of the State, i. e. the legal omnipotence of the State." Being supreme, sovereignty is not subject to law for supremacy presupposes the existence of no authority equal to or above itself. As thus viewed, sovereignty is an indivisible faculty, the possession of which cannot be transferred, being inherent in a State as a State.

But since the State is an ideal person, intangible, invisible, immutable, it obviously cannot act directly, (save when the people, by revolutionary means, create a new government) but must carry its supreme legal will through political instrumentalities and agencies to which it delegates or entrusts the exercise of sovereign powers. Such a delegation is of the essence of government.

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[13] Thorpe, Essentials of American Constitutional Law, pp. 8-12.

These fundamental distinctions have been classically stated by Justice Matthews in these words:

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all governments exist and act." [14]

The instrumentality through which is entrusted the exercise of sovereign powers does not thereby possess or acquire a right of sovereignty. The State or the people remain sovereign, the instrumentality, its agent or government. As Judge Jameson in his authoritative work entitled "The Constitutional Convention" succinctly states, "But to delegate to another the exercise of the power (sovereignty) within prescribed limits or for a determinate time or purpose, is no alienation of it, but supposes it to be still virtually in the original hand."

To go back to the question, is partial alienation or relinquishment of sovereignty legally recognized or possible under the constitutional law of the United States? With the above discussion for a premise, it is safe to state that such a thing cannot be done, for sovereignty being indivisible and its possession being not transferable, it is legally inconceivable for a political organization to possess or acquire partial or limited sovereignty. Sovereignty, as one writer puts it, is possessed either wholly or not at all, and if possessed it is possessed by a State and not by its government.[15]

With respect to the Commonwealth of the Philippines, there is ample authority to support this conclusion. In the first place, the Philippine Islands will still be a mere dependency or possession of the United States during the transition period provided for in the law. For while it is true that the avowed ultimate purpose of the Hare-Hawes-Cutting Law is withdrawal of American sovereignty from the Philippine Islands, the law itself provides for a system of government for these Islands as possessions of the United States. We may adopt a constitution, it is true, but only in pursuance of the Hare-Hawes-Cutting Law; we may not do so without this act, nor in contravention of it. The law further provides that during the transition period and pending final withdrawal, Amer-

[14] Yick Wo vs. Hopkins, 118 U. S. 356, 370.

[15] Sinco, Philippine Government and Political Law p. 11.

ica shall be recognized as supreme in these Islands, as it requires that "All citizens of the Philippine Islands shall owe allegiance to the United States," and that "Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States." In short, the government of the Philippine Commonwealth, pending final withdrawal of American sovereignty, will still be the government of the United States in the Philippine Islands.

In the second place, as has been adverted to already, it has been settled long ago that the powers of Congress over the Philippine Islands are almost absolute, so great indeed, that it has been said by the United States Supreme Court itself, that the constitutional limitations which operate upon the authority of Congress when legislating for the United States are not controlling nor applicable upon Congress when enacting measures for the Philippines, except those which deny to Congress the power to act at all whether found in the Constitution or not.[16] More pointedly, the case of Snow vs. the United States says:

"The government of the Territories of the United States belongs primarily to Congress, and secondarily to such agencies as Congress may establish for that purpose. During the term of their pupilage as Territories, they are mere dependencies of the United States. Their people do not constitute a sovereign power. All political authority exercised therein is derived from the General Government. It is indeed, the practice of the Government to invest these dependencies with a limited power of self-government as soon as they have sufficient population for the purpose. The extent of the power thus granted depends upon the organic act of Congress in each case, and is at all times subject to such alterations as Congress may see fit to adopt." [17]

In the third place, however ample and complete may be the delegation of the exercise of sovereign powers may be, there is only administrative autonomy and not political inde-

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[16] Downes vs. Bidwell, 182 U. S. 244, 45 L. ed. 1088; De Lima vs. Bidwell, 182 U. S. 1, 45 L. ed. 1041.

[17] 18 Wall. 317, 21 L. ed. 784.

pendence or sovereignty. As Willoughby comprehensively explains, "Thus, States may concede to colonies almost complete autonomy of government and reserve to themselves a right of control of so slight and so negative a character as to make its exercise a rare and improbable occurrence; yet so long as such right of control is recognized to exist, and the autonomy of the colonies is conceded to be founded upon a grant and continuing consent of the mother countries the sovereignty of those mother countries over them is complete and they are to be considered as possessing only administrative autonomy and not political independence." [18]

In the fourth place, a political entity cannot acquire sovereignty as a gift or grant of a State. When it acquires the attributes of sovereignty, from that moment it becomes a State, no longer a colony. The reason why sovereignty cannot create sovereignty by its own will or act is that "legal authority cannot create another authority legally superior or equal to itself." [19] It would be an absurdity. Thus, if a colony, such as the Philippines, withdraws itself from the sovereignty of the governing State, its existence as a new State dates from the time of its withdrawal and not from the moment its independence is recognized by the parent State. "The existence of its sovereignty is founded upon the fact that it no longer recognizes allegiance or renders obedience to the old sovereignty, and not upon the fact that the old sovereignty has by a treaty or other form of declaration indicated that it no longer claims its allegiance." [20]

The recognition accorded by the mother country and other States does not constitute its creation but a mere acknowledgment of it as an accomplished fact. And according to Professor Sinco, the United States Supreme Court accepts this doctrine when in referring to the establishment of the United States after its separation from Great Britain, it said, in the case of McIlvaine vs. Cox's Lessee, to the effect that "The several States which compose this Union, so far at least as regards their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights

[18] Fundamental Concepts of Public Law, p. 75.
[19] Willoughby, supra.
[20] Willoughby, Op. Cit., pp. 166, 170.

and powers of sovereign States, and they did not derive them from concessions made by the British King. The treaty of peace contains a recognition of their independence, not a grant of it." [21]

2. *Criticisms Against the Juristic Concept of Sovereignty*

The strictly juristic conception of sovereignty has been criticised on these grounds:

(1) That the concept of sovereignty is not divisible as a concept, for by its very nature as concept, it is abstract, an idea and therefore, can no more be divided than can goodness, justice, etc. be. To conceive of sovereignty as the supreme legal will is merely to state a principle. It begs the question at issue to say that it is not sovereignty but the exercise of sovereign powers or a number of them may be delegated.[22]

(2) The old concept of sovereignty that it is absolute and indivisible was due to the prevailing political philosophy then existing when there was only one sovereign, one king, who alone could exercise supreme will. But the advent of democratic governments has reversed the old theory, so that now sovereignty itself remains with the people, by whom and for whom all governments exist and act.[23]

(3) If Congress has the power to alienate sovereignty by one act, there is no reason why it may not be withdrawn gradually and by several acts. There is no prohibition in the Constitution to the latter action.[24]

(4) If sovereignty is absolute, international law could not exist. But the fact is that international law exists and forms a very substantial limitation of State sovereignty.[25]

(5) Judge Jameson's statement has no materiality in discussing the status of the Commonwealth because his conclusion has been premised upon the fact that the people who hold the convention shall eventually become part and parcel of the Federal Union, whereas the Filipino people who shall hold a convention under the Hare-Hawes-Cutting Act, will eventually separate themselves from the United States. Moreover,

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[21] 2 Cranch. 280.
[22] Bernabe Africa, Sunday Tribune, 1933; Juan Sabares, Tribune, 1933.
[23] Sabares, supra.
[24] Sabares, supra.
[25] Africa, supra.

Judge Jameson dealt with delegation of powers while the Hare-Hawes-Cutting provides for a partial relinquishment of sovereignty, two distinct things.[26]

(6) Under American constitutional law, sovereignty is divided between the States and the Union, a fact recognized by decisions of the United States Supreme Court.[27]

(7) Another instance where sovereignty is subject to law, aside from international law as such, is a treaty. For a treaty is as much law as legislative act and forms part of the law of the land.[28]

(8) While it is true that the Hare-Hawes-Cutting Law is but a part of the Municipal Law of the United States, it is an act which vests the Philippine Islands with certain attributes which are of the characteristics of personalities in international law; therefore we must resort to international law precepts to gauge the status of the Commonwealth.[29]

(9) In the United States, the terms sovereignty and exercise of sovereign powers are interchangeable terms and do not have distinct meanings.[30]

(10) While it is true that Congress has complete power of repeal over municipal corporations, being strictly agents of the United States government, the Philippine Islands, although belonging to, is not a part of the United States, and since the purpose of this Independence Act is not to set up a convenient instrumentality for the exercise of the powers of the United States but to relinquish its sovereignty over the Philippine Islands, Congress may not exercise the power of repeal.[31]

3. *Analysis of these points and Justice Fisher's Thesis*

The first criticism levelled against the strictly juristic conception of sovereignty is that it is indivisible only because it is an attribute. The writer then cites a definition of Bouvier's law dictionary quoting Judge Story of what sovereignty consists, as follows:

"Sovereignty—The union and exercise of all human power possessed in a State; it is a combination of all power; it is the

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[26] Sabares, supra; Jesus Y. Perez, Tribune, Aug. 29, 1933.

[27] Perez, supra.

[28] Perez, Ibid.

[29] Ibid.

[30] Ibid.

[31] Justice Fisher, Sunday Tribune, July 16, 1933.

power to do everything in a state without accountability,—to make laws, to execute and apply them, to impose and collect taxes and levy contributions, to make war and peace, to form treaties of alliance or of commerce with foreign nations, and the like." And then he argues, "Going back to the definition of Justice Story, above quoted, it will appear that the Commonwealth shall have practically all the powers that constitute sovereignty except the power to form treaties of alliance with foreign nations and the like."

It is apparent, however, that both the writer and the authority he cites mistake sovereignty for the exercise of sovereign powers. For sovereignty is a unity. It is not the sum total of the powers of the State, such as taxation, police power, eminent domain, and the like. Nor is it the aggregate of the functions of the State, such as the legislative, the executive, and the judicial functions. These powers and functions are but manifestations of sovereignty, the indivisible essence of a State's existence.[32]

The second and third arguments have been sufficiently covered in the previous discussion. The question raised in the fourth argument and that of the seventh involving international law and treaties as substantial limitations of State sovereignty could be dismissed by simply adverting to the fact that they are consensual in nature and what has been consented to cannot be called a limitation.

The criticism against the applicability of Judge Jameson's statement of the rule of law contained in the fifth argument is unfounded. It is true that the Hare-Hawes-Cutting Law looks forward to alienation of sovereignty of the United States over the Philippines, but this alienation is not accomplished by the institution of the Commonwealth pursuant to the constitution drafted as provided in the Independence law. For all intents and purposes, during the period of transition, as has been pointed out, the situation of the Commonwealth will be similar to that of what obtains at present under the regime of the Jones Law with perhaps more autonomous powers. Partial alienation of sovereignty has been sufficiently established to be legally impossible under American constitutional law.

Arguments six and nine referring the division of sovereignty between the States and the Union, as well as of decisions of

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[32] Sinco, Philippine Government and Political Law, p. 10.

courts to the effect that "sovereignty" and the exercise of "sovereign powers" are interchangeable just prove the thesis of the juristic conception of sovereignty. They simply prove that the explanation of Thorpe to the effect that when decisions contain "State sovereignty" and "national sovereignty," what has been referred to really mean government or the exercise of sovereign powers. An examination of the cases cited to prove the existence of decisions where these term have been used interchangeably will demonstrate clearly this fact. For example, in the case of Ableman vs. Both, which says that "the powers of the general government and of the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties," we find that the terms "sovereignties" and "powers of the government" are used to mean the same thing.[33] Again, the case of Virginia vs. West Virginia, refers to "governmental powers" as meaning "sovereignty" when it said that "it is certain that Governmental Powers reserved to the states by the Constitution—Their Sovereignty—were the efficient cause of the general rule by which they were not subject to judicial power. * * *[34]

But that courts have been quite free and indiscriminate in the employment of the term "sovereignty" does not argue against a more careful and discriminate use of it. It simply shows the need for knowledge of the distinction between the two terms even among judges and by courts. For that there is a clear distinction between sovereignty and sovereign powers cannot be denied. Even writers of international law recognize the distinction. Oppenheim, for example, in recalling the development of the concept of sovereignty, writes:

"The third and most important factor is, that the science of politics learns to distinguish between sovereignty of the State and sovereignty of the organ which exercises the powers of the State. The majority of publicists teach henceforth that neither the monarch nor Parliament nor the people is originally sovereign in a State but the State itself. Sovereignty, we say nowadays, is a natural attribute of every State as a State. But a State, as a Juristic Person, wants organs to exercise its powers. The organ or organs which exercises for the State

[33] 21 How. 506, 516.
[34] 246 U. S. 565.

powers connected with sovereignty are said to be sovereign themselves; yet it is obvious that this sovereignty of the organ is derived from the sovereignty of the State."

On the applicability of the principles of international law to the Commonwealth because under these principles, the Commonwealth of the Philippine Islands will have a semi-sovereign standing, advanced by the eighth contention, it suffices to point out that, on the question of the legal competency of Congress to repeal the Hare-Hawes-Cutting Law, which is a domestic or municipal law of the United States, only the constitutional law of the United States will apply, for Congress cannot be legally bound to recognize or enforce a rule of international law repugnant to her constitution. This is so elementary that it need not detain the discussion longer.

Now with Justice Fisher.

As a prelude to his logical exposition of the repealability of the Hare-Hawes-Cutting Law, Justice Fisher distinguishes between the object of the creation of municipal corporations and the purpose of the establishment of the Commonwealth and uses it as a promise to the proposition that the Independence law may not be repealed because of the distinction and especially in view of the fact that the Philippine Islands belong to but not a part of the United States. The distinction sought to be stressed upon by Justice Fisher, however, has existed long before the enactment of the Hare-Hawes-Cutting Law, way back in 1901 to be exact, when the principles embodied in the so-called Insular cases were clearly pronounced, but during all these times, contrary to what is now proposed or suggested Congress may not do, the Congress of the United States has been enacting and repealing laws affecting the Philippine Islands as a mere dependency and possession of the United States and not as an integral part of it.

With respect to the question of legislative divorce, it is true that Congress may not repeal a divorce once granted by the legislature, but the analogy drawn between the destruction of status in the enactment of a legislative divorce and the creation of status through the Hare-Hawes-Cutting Act does not hold true. First, because the Philippines is not divorced from the United States by the Hare-Hawes-Cutting Law, even relatively Second, the status of the Commonwealth created by the law, as

[8] McNair's ed., Oppenheim, International Law, sec. 69.

has been amply demonstrated, is one fully subject to Congressional control, while the status created by the destruction of marriage is not subject to legislative control by reason of expediency, not of law. Third, legislative divorce is in the nature of a decree, an order, or judgment while the Independence Act is a law, pure and simple. These facts are fully explained by the Supreme Court of Ohio in the case of Bingham vs. Miller in the following language:

"To grant a divorce, is not to enact a law; an expression of the will of the law-making power that the marriage relation is dissolved, is no law. It is a decree, an order, a judgment, but not a law. A law is a rule, something permanent, uniform and universal. A divorce begins with the parties, and ends with the parties. It is a single act, and expires with the performance of a single function."

The court in that case considered a legislative act granting a divorce to certain individuals as a usurpation of judicial power, and therefore, null and void, explaining its inhibition in these terms:

"If it affected only the rights of property, we should not hesitate; but second marriages have been contracted and children born, and it would bastardize all these, although born under sanction of apparent wedlock, authorized by an act of the legislature before they were born, and consequence of which the relation was formed which gave them birth. On account of these children, and for them only, we hesitate. And in view of this, we are constrained to content ourselves with simply declaring that the exercise of power of granting divorces, on the part of the legislature, is unwarranted and unconstitutional,—an encroachment upon the duties of the judiciary, and a striking down of the dearest rights of individuals without authority of law." [36]

The next point asked is whether Congress may repeal the act of retrocession of the District of Columbia to Virginia so as to get back the territory retroceded. This may not be done because it is against the Constitution of the United States prohibiting the impairment or diminution of the territory of any state of the American Union without its consent, and not be-

[36] 70 Ohio Rep., 445.

cause the act of retrocession created a status which may not be impaired simply because of its being a status and not because of express provision.[37]

On the question of Texas, the contention is that the legislature of Texas, by repeal of the resolution consummating its union with the United States, may not recover the attributes of sovereignty she partially surrendered to the Union and revert to her former status as an independent republic. Again, on this score, the argument that the legislative act may not be repealed is true; but it is based on reasoning different from that assigned. Before proceeding, it must be observed that the implication that Texas may get out of the Union with the United States through legislative act, is manifestly erroneous. Such notions have died and been buried in the battlefields of the great American Civil War which settled once and for all time the doctrine that no member state may voluntarily secede from the Union. As the martyred Lincoln said, "No state upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void."

The reason why Texas may not pass such a repeal law is that the Constitution of the United States prohibits it. This fact has been brought out fully by the Supreme Court of the United States precisely at an attempt of Texas to do just that very act. In the case of Texas vs. White, the United States Supreme Court said:

"The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States. When, therefore, Texas became one of the United States, she entered into an indestructible relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact, it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, as indissoluble as the union between the original States. There was no place for reconsideration or revocation except through revolution or through the consent of the States. Considered therefore as transaction under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the

[37] Leavenworth R. Co. vs. Lowe, 114 U. S. 525, 99 L. ed. 264.

citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely void. They were utterly without operation in law * * *."[38] As respects the argument that Texas surrendered partially her attributes of sovereignty to the Union, it has been shown all along that such a conception is legally inconceivable. Texas is either an independent state or a mere part of the American Union. When she chose to join the Union, she either did not lose her sovereignty wholly, or lost every bit of it. But since Texas is part of the Union by her act of incorporation, she lost every vestige of her sovereignty which she possessed as a republic and assumed the status of the States of the American Union in which she possesses delegated powers of sovereignty only. With respect to the question as to whether Congress could repeal the Platt Amendment and the Permanent Peace Treaty with Cuba, the answer could be better stated in the language of the United States Supreme Court itself in the case of Fong Yue Ping vs. U. S.:

" 'A treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislations will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case, the last expression of the sovereign will must control. So far as such a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal' ".[39]

What is the effect of such a repeal, however? It would bring about simply the abolition of the special privileges of the United States assumed by Cuba through the two measures, and not the restoration of Cuba to her status after Spain relinquished her full sovereignty over her. The reason is that sovereignty is territorial, and may only operate within the limits of the State. Even if Congress were to enact a law expressly

[38] 19 L. ed. 227.
[39] 149 U. S. 698.

purporting to restore Cuba to her former status, such an act would not be legally binding because Cuba is not a territory of the United States, nor does it belong to her.

IV

CONCLUSIONS

From the foregoing discussion, the writer concludes that Congress has full power and authority to repeal the Tydings-McDuffie Law because:

(1) There is nothing in the Constitution of the United States expressly prohibiting Congress to repeal the law, nor in the essential nature of the Independence law as a Municipal Law of the United States that would legally impede Congress from abrogating it;

(2) The contention that the Hare-Hawes-Cutting Law may not be repealed because it creates a status of semi-sovereignty has been shown to be untenable in view of the dominant concept of sovereignty in the United States to the effect that it is essentially indivisible; and

(3) While it may be true that international law may classify the Commonwealth of the Philippine Islands as a semi-sovereign state, the United States will consider it simply as a dependency possessed or endowed with ample autonomous powers.