

THE CONSTITUTIONAL PLAN OF THE PHILIPPINE REVOLUTION

A LECTURE DELIVERED BY HON. TEODORO M. KALAW, SECRETARY OF THE PHILIPPINE ASSEMBLY, BEFORE THE LAW FORUM OF THE COLLEGE OF LAW, UNIVERSITY OF THE PHILIPPINES, OCTOBER 17, 1914.

The separatist movement initiated since the year 1896 up to the promulgation of the Malolos Constitution establishing the Philippine Republic, was not a mere stroke given to chance, an outburst of ungovernable passions, but was entirely an action well pondered over, conducted throughout upon a platform of lofty ideals of emancipation and organization. It was thus a movement both political and constitutional. Those who observe the tendencies of each step, as well as the purpose of each plan, will see at every turn the constructive genius inspiring the work of destruction. How like a paradox! Beside the armed hand there was always reason as a guide. Every warrior had his statesman. Emilio Jacinto was that of the "katipunero" Bonifacio; Rianzares Bautista, Mabini, Paterno and others, those of the revolutionist Aguinaldo. Picture in your mind this effective coalition and you will see life exalted over death, law enlightening the chaos: a bloody campaign for the ideals of civilization.

The student of political science need not go out of the country to find abundant material, still fresh, a field hardly explored, at a time when ideas were poured forth with vehemence, like a spontaneous explosion, in order to form as a whole the political program of the epoch. And what an epoch so short and productive! From August, 1896 until 1899—hardly two years—that ideal manifested itself in Constitutional projects, programs of reforms, organic decrees, manifestos, memorials, hand-bills, declarations of rights and other documents then in vogue.

The "Cartilla" (charter) of the Katipunan was the first plan of democratic organization ascribed to the genius of Emilio Jacinto, justly called the brain of that Association. It is a collection of moral and political principles, a code for the man and the citizen, which teaches him all at the same time, freedom, equality and sacrifice for the mother country. "A man is not the worthier just because he is King, has an aquiline nose, white complexion, nor because he is a priest, the substitute of God (*kahalili ng Dios*), nor because of the high prerogatives which he enjoys on the surface of the earth; but it is he, and with greater and truer worth,

who practices the good and has his word of honor, who is dignified and noble; he who does not trample upon the rights of others nor allows his to be trampled upon; he who knows how to prize and love the mother country, even though he has been brought up in the mountains, and does not know any language than his own native tongue." Thus recited a paragraph of the "Cartilla."

At the beginning of the second period of the Revolution, Aguinaldo repeated the same thoughts in different words, when he made his famous appeal to all the Filipinos inviting them "to unite as a people for the formation of a noble society, based not upon blood or pompous titles, but upon the work and personal merits of each one; a free society where there exist no egoisms and personal politics to annihilate and crush it, nor envy and favoritism to debase it, nor braggartism and garrulity to ridicule it."

Emilio Jacinto completes his political ideas, which were the same as those of the Katipunán, in his other writings. Here are some of its paragraphs:

"I believe, and do firmly believe, that the prosperity of a people depends upon the people itself. A people who knows and esteems reason, and has, for a rule of conduct, goodness and dignity in all its acts, will not place itself at the mercy of any tyrant, nor submit to force or fraud, nor become a tool of the haughty and abominable prevaricator who rules from the heights of power.

"We should not recognize the superiority of the ruler as an attribute inherent in him by reason of his being. The obedience and respect due to him, proceeds from the power conferred upon him by the people itself, an attribute which is like the union of all the powers of the people.

"Whence is it that he who respects the power conferred by the people, respects the people itself, through identity with the will of all the citizens composing the whole nation, identity or conformity which is necessary to the very life of the people."*

Emilio Jacinto has forewarned in the following paragraphs the actual discussion as to the power of interpretation and removal of the members of the judiciary. Listen to the following:

"The old practice which considers the judge as above the laws, brings about grave consequences; because the laws and reason are trampled down.

"We should, therefore, discard this practice and proclaim: that the laws are above all human consideration, being the product of the popular will; and if the judges wish to remain in their office, they should necessarily comply with the dictates of justice; otherwise they should be removed."**

Substitute for the word "laws" the word "Constitution" and you have the same problem of to-day.

* E. de los Santos, Emilio Jacinto.

** E. de los Santos, loc. cit.

It is but just to think that those men of '96 had in their minds not the idea of vengeance nor the gloomy obsession for blood, but the seed of great conceptions which definitely became crystallized in the Malolos Constitution. It was not a struggle of men or of races, but of ideals and of institutions. They could, during the war, make themselves arbiters of the situation. This they did not do. Never did they want to trample on the law. On the contrary, they tried to implant the dogmas of democracy wherever their sphere of action reached, seeing to it that all authority originated from the people. While they were undertaking the destructive work of the Huns of Attila, they offered to their brethren, until then subjected, the Decalogue of the free citizen.

The Katipunan implanted in the minds of the people the idea of separation, whose first violent manifestation took place in August, 1896. A year and two months later, that is, on November 1, 1897, the representatives of the Revolution met at Biak-na-Bató as a Constituent Assembly, and adopted unanimously the first document which figures as the *Provisional Constitution of the Philippine Republic*. It is said that it was Isabelo Artacho who spread the idea. At all events, it reveals the same high purpose. This Constitution, containing thirty-two articles and modelled after a Revolutionary Constitution of Cuba, was to be effective for two years only, after which the Assembly of Representatives was to be convoked. This event, as is well known, never took place on account of the pact of Biak-na-Bató and the expatriation of Aguinaldo and his officers to Hongkong.

The Spanish-American war came. And Aguinaldo, before returning to the Philippines in May, 1898, charged a member of the Revolutionary Council at Hongkong, D. Mariano Ponce, with the work of preparing another project for a provisional Constitution, which was later submitted to D. Felipe Agoncillo and D. Justo Lukban. These approved the project in all its parts. Aguinaldo later brought it to the Philippines determined to put it in force.

The project of Ponce, like the Constitution of Biak-na-Bató, organizes the Assembly of Representatives, creates the executive departments of the government and contains a declaration of rights in which are embodied the essential liberties of man. It is modeled after the republican program of Pi and Margall and after some Spanish Constitutions.

When Aguinaldo arrived at Manila he had as first adviser, among others, the old lawyer D. Ambrosio Rianzares Bautista who apparently induced him to leave all idea of a Constitution suggesting to him instead a dictatorship as that of Cromwell or of Napoleon. The dictatorial government was consequently established with the object of issuing de-

crees, according to the judgment of competent persons, under the exclusive responsibility of the Dictator, until the organization of the Assembly on the establishment of peace throughout the territory. • Riazares Bautista was of the opinion that under those circumstances the dictatorship was the most appropriate because it could smoothly lead the way to a Monarchy or a Republic, according as one or the other form of government is adopted, and furthermore because it was indispensable to have the necessary and summary powers in order to "repress with a strong hand the anarchy which is the inevitable sequel of all revolutions." **

You must have been surprised to hear the word "*Monarchy*" at this age of democracy; but it is well understood that it was but a slight mention of one of the many forms of which governments are susceptible. I doubt if there was any one who had seriously considered it. And if at any time it had been suggested, the fact is the idea and its author were always put in ridicule.

During those days two personages who later played an important part in the Revolution, were not indifferent to the events that were taking place; but they entertained ideas which were entirely opposite. I refer to Paterno and Mabini. Paterno wanted to take advantage of the situation in order to extort from the expiring Spanish sovereignty an autonomous government for the Philippines. His plan dated June 19th, 1898, recognized the sovereignty of Spain through the Governor-General but established a Philippine Legislative Department and a Council of Government with ministerial responsibility. With regard to individual rights, it asked for a complete identity with those in Spain. This plan was bound to fail. Even General Augustin, not knowing the opinion of the Metropolis, because all communications with Spain were already interrupted, did not, it is said, dare to accept it. As to the Filipinos, in Kawit, the seat of the Dictatorial Government, talking about autonomy was prohibited and it was treason to advocate the idea. The Filipino people had decided to struggle for its independence and there was nothing to swerve its way.

On the other hand, Mabini, the man who was soon to become the brain of the Revolution and the organizing genius of Aguinaldo conceived of plans entirely distinct from those of Paterno. Mabini and Aguinaldo did not know each other. Before Aguinaldo's return and on the eve of the opening of the hostilities between the United States and Spain, Mabini, from his retreat as a paralytic (in Bay, Laguna) foresaw that in the struggle the Philippines would be affected. Consequently, he prepared a plan for the organization of a general uprising in case of war between the Spaniards

* Vide, Proclamation of Aguinaldo of May 24, 1898.

** Vide, Manifesto, by Riazares Bautista.

and the Americans. This plan later reached Aguinaldo's hands when he was already in Kabite. Aguinaldo became interested in the author and summoned him. Since June of that year Mabini began to intervene as the Great Privy Counsellor of Aguinaldo.

The first act of Mabini was the abolition of the dictatorial government changing it into a revolutionary government. He organized the municipalities and provinces, the judicature, and police force, implanted the civil registry and the census, re-established the regulation of the taxes and registry of property, issued regulations for the Military procedure, and, finally, published his great decree, the fundamental decree organizing the Revolutionary Government. The Dictator was called President. At the outset, four secretaryships were created: that of Foreign Relations, of Navy and Commerce; of War and Public Works; of Police, Justice, Instruction and Sanitation; of Finance, Agriculture and Fabril Industries. A Revolutionary Committee was organized abroad consisting of the following three delegations: Diplomacy, Navy, and Army. Finally, the Revolutionary Congress which later drafted and approved the Malolos Constitution, and consisting of representatives from the provinces, was created.

Mabini conceived three principal ideas: 1st, to prevent anarchy from following the cessation of the Spanish administration in the Philippines, by organizing the provinces and municipalities; 2nd, to acquire for the government of Aguinaldo the support of the provinces through their representatives in Congress; and 3rd, to organize a concerted movement toward the establishment of the Philippine Republic in the country and abroad, through the National Government in the first case, and its Envoys abroad in the second case.

Among the institutions called upon to serve upon this great work, that which interests us now is the Revolutionary Congress.

The first important question was whether or not this Congress had actually the attributes of a Constituent Assembly. This question was discussed. Apparently, even among the leaders of that time there was a divergence of opinion. Articles 15 and 16 of the organic Decree provided:

"Art. 15. The powers of Congress are: to watch over the general interests of the Filipino people and to see that the revolutionary laws are complied with; to discuss and pass said laws; to discuss and approve before their ratification all Treaties and loans; to examine and approve the accounts of the general expenses which the Secretary of Finance may annually submit, as well as the extraordinary assessments and such others as may afterwards be levied.

"Art. 16. The Congress shall, besides, be consulted in all grave and transcendental matters whose resolution admits of delay or waiting; but

the President of the Government may resolve those of an urgent character, without prejudice to his giving account to said Body of the resolution which he may have adopted, by means of a Message."

The point is whether under these provisions the Revolutionary Congress had the power to adopt a Constitution even if it were only provisional. Mabini, the author of the decree, contended that it did not. He claimed that it was merely an Advisory Assembly. He also contended that it was inexpedient to adopt a Constitution at that time. He was in favor of acting rather than deliberating, because it was so required by the circumstances. Consequently, he favored the giving of more authority to the President.

His ideas were more concretely expressed when, from Rosales on July 19, 1899, he wrote the following:

"No revolutionary people should adopt a Constitution as perfect. They should only limit themselves to a declaration of principles in the light of which they propose to bring about their work. The form in which it is to be concluded should be variable in order to adjust itself to the circumstances of time, place, and the surrounding atmosphere. The Revolution does not construct but simply prepares: it makes the people ready for a more perfect Constitution on the advent of peace, and this should always be borne in mind, because the best system applied at an improper time gives very bad results. The science of governing does not consist in knowing how to choose the best, and the most perfect, but the most useful and expedient. Just as there can not be found two persons exactly alike, so there do not exist two revolutions exactly identical: whence the necessity of invention. The revolutionist who only knows how to copy but not how to invent, does not deserve such a name. Routine is the antithesis of Revolution." (*)

The Revolutionary Congress was inaugurated on September 15th. The Presidential Message was read in the midst of the most profound expectations. The following were among its paragraphs:

"As the temple of the law is opened to us, I know well how the Filipino people, a sensible people *par excellence*, would flock to its doors.

"Purged of its past errors by the oblivion of three centuries of ignominy, its heart opened to the most noble aspirations, and its soul exalting in the feeling of being free; delighted in its integrity, and inflexible as to its own weakness, here, at the Church of Barasoain, at one day a sanctuary of mystic prayers, now the august and imposing temple of the dogma of our independence, it comes to gather in the name of peace, that is perhaps drawing near, the votes of our thinkers and of our politicians, of the fighting defenders of the native soil and of the profound scholars of the tagalog tongue, of inspired artists and powerful masters of finance, in order to write with these votes the immortal book of the 'Philippine Constitution' as the highest expression of the national will."

* "Something for Congress."

In other words, the President himself invited Congress to discuss the Philippine Constitution. What must have passed? Undoubtedly the Message could not have been written by Mabini. Neither the style nor the ideas bore the stamp of his individuality. Mabini, in one of his writings, deploras this fact and considers it as his downfall.

This juncture was important in that epoch because it marked the beginning of two developments, of two tendencies, which were to struggle until the end: one absolutist and the other *constitutionalist*. The first was represented by Mabini, who continued to be the first counsellor of Aguinaldo, and the second by the followers of the Constitution, to wit: Paterno, Buencamino—who was the author of the Message,^{*} Calderón, and others. The constitutionalists, having a program which was agreeable to all, was naturally gaining ground, especially in Congress, while Mabini was losing because of his inflexibility so much so that he was called the *Black Chamber of the President*.

The Revolutionary Congress began its work in the light of these two opposing ideas. The first work after its organization, had to be the Constitution of the State. It was a gigantic, strenuous effort. Every one felt the burden of an immense responsibility before the world. It was an undertaking of honor destined to be the *most glorious achievement* of Filipino capacity. Calderón, having shown from the beginning of the sessions a knowledge of the matter on hand, was charged with the duty of framing the scheme. The Committee was formed by the following gentlemen: Hipolito Mag-salin, Basilio Teodoro, José Albert, Joaquín Gonzalez, Gregorio Araneta, Pablo Ocampo, Aguedo Velarde, Iliginio Benitez, Tomas G. del Rosario, Jose Alejandrino, Alberto Barretto, Jose Ma. de la Viña, Jose Luna, Antonio Luna, Mariano Abe-la, Juan Manday, Felipe Calderon, Arsenio Cruz Herrera and Felipe Buencamino.

Three plans were submitted to the Committee: the Paterno plan, the Mabini plan, and that of the reporting member, Calderon. ** I presume that the Paterno plan must have been merely a modification of the project he submitted to General Augustin, omitting naturally, autonomy as the basis, in order to convert the country into a united independent Republic. The Mabini plan was expounded in his *Constitutional Program* published together with the *The True Decalogue*, the latter serving as an introduction. This pamphlet is of great interest as a document relating to that period, the most important in the whole Revolution according to Le Roy, *** having merited the severe criticism of an adversary as well as the warm support of the people.

* According to a letter of the same Buencamino to the author.

** Vide, Calderón, My Memoirs of the Philippine Revolution.

*** "The Americans in the Philippines."

The True Decalogue reminds one of *that of Moses*; but its principal merit consists in its having formulated precepts in which the highest aspiration of the epoch has been condensed in a dogmatic and lapidary form, as if the intention were to engrave it perennially in the conscience of the individual. Listen to this extract:

"Love your Country next to your God and your honor, and more than yourself, for she is the only paradise which God has given you in this life, the only patrimony of your race, the only inheritance from your ancestors and the only boon for your descendants; because of her you have life, love, interests, happiness, honor and God.

"Strive for the happiness of your Country before your own, making of her a kingdom of reason, justice, and labor; for if she is happy, you and your family will also be happy.

"Strive for the independence of your Country, because you alone can have real interest in her aggrandizement and upliftment, as its independence means your own freedom; her aggrandizement, your perfection and her upliftment, your own glory and immortality.

"Do not recognize in your Country the authority of any person who has not been elected by you and your countrymen, because all authority comes from God and as God speaks through the conscience of each individual, the person who is designated and proclaimed by the individual consciences of a whole people, is the only one who can show the true authority.

"Endeavor to obtain for your country a Republic and never a Monarchy; the latter ennobles one or more families and founds a dynasty; the former makes a people noble and deserving by reason, great by liberty, and prosperous and bright by work."

The project of the chairman, Calderon, naturally prevailed. It was first approved by the Committee and later by Congress with an important amendment—that relating to the religious question—and others of little significance. At that time there could not be expected much political culture from our men, this having not yet been taught. With the exception of some who have been educated abroad, like Paterno, Dr. Gonzalez, Dr. Pardo de Tavera, D. Tomas G. del Rosario, etc., and with the exception of some others who, getting ahead of their time and the prevailing conditions, had devoted themselves through their own inclination and for the benefit of their country's cause to this kind of study, all the rest undertook the work of organizing the new State solely through their power of penetration and assimilation, qualities which can not be sufficiently admired in the Filipino. Whence it was that the majority of the projects presented were inspired by Spanish Constitutions, since these were the only ones then best known. Calderon, however, who had in his library, among others, the *Recopilación* of Francisco de Heredia of the year 1884, could prepare his project with the Constitutions of all the civilized nations up to

that time, constantly before him. Then began the work of selection. Calderon was of the opinion that it would be more appropriate to have for models the nations having the same civilization, the Latin. Furthermore, as he constantly bore in mind what he called our *religious tradition*, which gave, according to him, perfect union among the people, he paid more attention to the countries of Central and South America, specially Costa Rica. It is said that he had a predilection for the Constitution of Costa Rica. Besides these countries, he had for models the Constitutions of Spain, France and Belgium.

I do not believe it is easy to make a critical study of the Calderon project, later converted into the *Political Constitution of the Philippine Republic*. This Constitution was hardly ever in force; in fact it may be said that it had never been in force. We have not anything but its text. Neither do we have the Records of that Congress. The debates have not been transcribed. The little data that we have now, are taken from newspaper clippings and from information, often contradictory, furnished by some members of said Congress, who are neither sure of their memory. Besides, we know that the mere wording of a Constitution which it has not been possible to properly put into force, is not sufficient to lead us to an adequate interpretation of its structure and its workings. Usages, customs, all that mass of precedents, the very laws and regulations which are passed from time to time by the constituted Government,—all of these contribute to the giving of the breath of life to the dead letter of the Constitution. And, such usages and customs, and such supplementary laws and regulations, are those which properly establish the differences and peculiarities of each country, because the Constitution are literally the same, and countries are not bashful in copying from one another, in order to pretend a form of civilization which sometimes they do not possess, and a political culture like those of others whom they believe to be more advanced. But soon, facts break the crust of the law, and the characteristic energies of a people appear in their naked condition, and it is then that the real constitutional lines float on the surface, blotting out or rectifying the written words.

Now imagine how fallacious all comments on the Constitution of Malolos should be! At any rate, it would show the abstract theory of its framers, but not the Constitution itself. The Constitution is not something which is to be elaborated in the study room only, or in Academies or Parliaments, but it is the genuine and spontaneous embodiment of popular spirit in its long periods of development and perfection. If this is not so, behold what is happening in the great American continent. Countries under Constitutions identical in their wording establish nevertheless different governments. There are among these, some in which republican institutions only exist on paper, and behind the name of the Republic lurks a powerful Dictator.

What is the theory underlying the Constitution of Malolos? This can better be answered with the document in hand. The Constitution organizes the Filipino State called the Philippine Republic, the sovereignty residing exclusively in the people; it establishes a government which is popular, representative, alternative and responsible, with three distinct powers called the Legislative, Executive, and Judicial. The Legislative Power is exercised by the Assembly of Representatives, whose members are to be elected according to the law, with the right of censure and interpellation. During the close of its sessions, there stands a Permanent Commission. The Executive Power is vested in the President of the Republic, *through* the Secretaries of the Government. The President is elected by the Assembly of Representatives and the special Representatives convened as a Constituent Assembly; the President may propose laws like the members of the Assembly, and is only responsible in case of high treason. The Secretaries of the Government with its President constitute the Council of the Government. There are seven Secretaryships: that of Foreign Affairs, of the Interior, of Finance, of War and Navy, of Public Instruction, of Communications and Public Works, and of Agriculture, Industry and Commerce. The Secretaries are jointly responsible to the Assembly,—for the general policy of the Government, and individually for their personal acts. The Judicial Power is vested in the Supreme Court of Justice and in the courts organized by the laws. The Chief Justice of the Supreme Court is chosen by the National Assembly with the concurrence of the President of the Republic and the Secretaries of the Government. The organization of the provincial and municipal Assemblies is governed, briefly, by the following principles: (1) The government and direction of the interests of each province or town by their respective corporations; (2) Intervention by the Central Government, or in its case, by the National Assembly, in case they exceed their powers, and (3) Popular and direct elections.

Such is a brief synopsis of the organic theory of the Constitution. Elsewhere I have spoken of the constitutional rights of the individual which in many cases I consider more ample than in some countries of Europe and America.*

I do not now have the necessary time in order to make a critical study, but I think it proper to call your attention to some points constituting precisely the characteristic of our constitutional theory, which would undoubtedly surprise a scholastic criterion imbibed in North-American doctrines. I refer, for example, to the unicameral system, the preponderance of the Legislative Power, the establishment of the Permanent Commission, the immunity of the Executive and the ministerial responsibility, and to several other things. All can be condensed to a single point: the predominance of the Parliament. (

* In my pamphlet "The Constitution of Malolos."

This would seem contrary to your point of view, but it was perfectly accounted for at that time. You must bear in mind that it deals with a Constitution which was adopted hurriedly and in a provisional manner because of the urgent necessity of *immediately organizing the country*, until the convention of the real Constituent Cortes.*

The bicameral system is almost universally admitted. It has reached the stage of being a political axiom, if there any axioms in politics. It is not only upheld in order to give representation to the wealthy, to the privileged classes, to the permanent institutions, or else to the political units of the land. It is also upheld because civilization demands it. Antagonism is a law of civilization. This is because in a society everything is governed by antithesis: the state as against the individual, authority as against liberty, tradition as against innovation, uniformity as against variety, rest as against movement, order as against independence.** The resultant of these opposing forces is the line of progress, just as the conformity of the two legislative Chambers generate the law. As an example of this we have the principle of authority: just as there exists the principle of authority, the authority which is converted into despotism is repelled by the principle of liberty, and it is only through the equilibrium of these two principles that civilized man can live amidst order and law.

At the time when Constitutions which served as model to this part of the Constitution of Malolos were framed, the real value of these ideas could not have been duly appreciated. Spain herself, in one of her earliest Constitutions, established the single Chamber, which was later copied by some Republics of South America. In some States of Europe and even in North America, as in Canada, this simple organization still exists. Since the principal argument for this system is greatest rapidity of action, our men adopted it openly, for Mabini and even Calderon himself who always had in mind the special circumstances of the times, always asked less obstruction and greater facility of action for the government. Besides, the unicameral system was the favorite of the French Revolution, and in those days there was not a gentile warrior or public man who did not have this popular book.

In a word, the atmosphere of the times was not favorable to a double legislative organism. This is shown by the almost futile opposition to this part of the scheme. It is proved, furthermore, by the fact that the Constitution of Biak-na-Bató provided for only one Assembly of Representatives to be convened at the end of two years, that the Ponce plan, of the Revolutionary Board of Hongkong, consisted of but one assembly, and that the Paterno plan for an autonomous government also referred to a single Assembly.

* Vide. Preamble of the Project of the Constitution.

** Vide. H. de Ferron. *De la Division du pouvoir legislatif en deux chambres*, 1885.

With respect to the *Constitutional Program* of Mabini, it is true that it provided for a *Congress* and a *Senate*, but this was a Senate without legislative functions, that is to say, a Senate which is not a Senate. Its object was merely to "enlighten the Congress and the Government in all matters which may be within the jurisdiction of one or the other." Article 23 expressly says that "The power to enact laws shall reside in the Congress with the President of the Republic *with the advice* of the Senate." The Senate of Mabini was, thus "the Upper Chamber, retreating before the Popular Chamber, by force of political evolution, and on the way of reducing itself again to its primitive condition of a mere administrative council in order to leave the Assembly all alone in the field of legislation. . . ."

More interesting still is the idea of giving more weight to the Legislature Power over the other powers of the State. The Constitution of Malolos neither follows the criterion that the separation of the powers presupposes a reciprocal equilibrium, in order that each one may find in the other the principle of its own limitation, and in order that neither may effectively preponderate over the other by virtue of the doctrine of *checks and balances*.

The capital thought was to make the Executive dependent on the Legislative. So did Calderon, the author of the project, make himself expressly understood, boasting of the triumph of his idea. † Can we also say that this was the natural consequence of the political atmosphere of the times as well as a direct importation from Philippine constitutional sources? I believe so. The struggle between the absolutists and the constitutionalists, or rather between the militarists and the learned was insinuated. The former wanted the predominance of the President as a Civil and Military Chief at the same time; the latter, the predominance of Congress, as the representative of culture and intelligence. As the latter predominated in Congress, it was natural that their plan should succeed. At all events, this again proves to us the triumph of constitutionalism over absolutism, which forever vindicates the men of the Revolution.

The original sources of this theory can be found, as in every case, in the political ideas which invaded the Latin territory of both continents, Europe and America. The Legislative Assemblies were, from the beginning till the present, the sacred trustees of popular sovereignty. They are the leading force of the State. Ancient as well as modern democracy has chosen them as its favorite weapon. They constitute the most conspicuous achievement of the people over tyranny. Mabini himself, the perfect personification of Latin political dogmatism which does not admit of replies nor discussion, pictures the question to us very clearly in the following masterly words:

* Arosemena, *Constitutional Studies of the Government of Latin America*.

† Vide, Calderón, *loc. cit.*

"Society, then, should have a soul: authority. This authority should have a brain to guide and direct it: the legislative power. A will that works and makes it work: the executive. A conscience to try and punish the bad: the judicial power. These powers should be independent in the sense that one should not encroach upon the attributes of the other; but the last two *should be made subservient* to the first, just as will and conscience are subordinated to reason. The executive and the judicial cannot depart from the laws which the legislative may pass, just as no citizen can infringe them. The executive and the judicial are judged by the legislative; but this has no other judge than public opinion, or rather, the people themselves: the guaranty for its good working is in the plurality of its members and the publicity of its sessions. And it is because the power to legislate is the *highest manifestation* of authority, just as reason is the noblest faculty of our soul."^{*}

As a result of the establishment of these theories, specially on the European Continent, and on this continent specially in France, the parliamentary régime has been constituted as against the presidential. The first is characterized by unity of responsibility, and the second, by divided responsibility. The first is shown by close relation between the powers of the State; the second, by their premeditated separation. In spite of the siren's melodies which have been sung in its praise, a failure, in the more or less distant future, is being augured for the second, if some means of adjustment is not adopted in such a way that, without exactly reaching the extremes of parliamentarism, there may be more constant inter-exchange of necessary information as well as more cordial relations between the different branches of the Government. This step is being initiated in the United States to such an extent that we already find there determined followers both in theory and in practice.^{**} And this is because, even within the generic name of parliamentary régime, there subsist types of stages, and the Filipino system has preferred to adopt the French type—the predominance of Congress over the Cabinet—more than in the English type—the predominance of the Cabinet over Congress—because it has been found that the first was more in accord with their way of seeing things.

This preponderance of the Legislative is manifested in the election of the President of the Republic by the Assembly, in the fact that the qualifications for President are left to the discretion of the Assembly, in the procedure for impeaching the President and the members of the Council of Government, and specially in the institution of the Permanent Commission.

In the election of the President of the Republic, they have naturally followed the example given by France, the country which has served as their model. Considering the system of government which has been chosen, and

* "The Political Trinity."

** The Jones Bill is an instance.

in view of the special circumstances of the times, the measure taken was entirely proper. This was the same measure adopted by the young Republic of China in its first provisional Constitution, although in the second nothing is said about it. Some North American States also adopted it during the first years after the Revolution. Under the parliamentary system, this manner of election seemed more proper for the country, as it also, more than any other, tended to subserve better the true principles of parliamentarism, for the very reason that the President would have the entire confidence of Congress, and the case of the Executive and the majority of the Legislature belonging to distinct political factions, a circumstance which would make the normal course of the administration difficult, could not happen. Besides this method responded better to the ideal of the times, to wit: to make the President of the Republic a *mere executive agent of Parliament*.

The power of the Assembly to regulate absolutely the qualifications for President of the Republic, taken together with its right to elect said President, seems to me to be another of the strongest proofs of legislative predominance. The executive power is left entirely in the hands of the Assembly. No limitation is placed on abuses. There is no guaranty for the security of the Nation. The presidential election is of such great national interest that I doubt whether there is any other matter above it. The mere fact that the Assembly is the agency chosen by the Nation to elect the President does not mean that the Nation should have no other guaranty against the arbitrary will of said Assembly. And the most essential guaranty for the nation in such case would be provided by defining by means of the Constitution itself the conditions required for the position, as well as by regulating the procedure of the election. The authors of the Constitution of Malolos, in their eagerness to increase the attributes of Congress as against the President, could not foresee that they were legislating for the future and for the people; that they should have in mind, more than the prerogatives of power, those of the nation. They armed the Legislature against the President, but did not arm the people against the Legislature.

This is not a result of a particular difference of opinion. No, it is a difference in principles, it is a vice going to the very root of the matter, from which many countries, including England herself, are suffering. This is so because if their theory is that Parliament is the seat of sovereignty, to defend Parliament is for them to defend sovereignty, and to increase the power of Parliament is to increase the power of sovereignty. They did not conceive, not only that popular sovereignty is a distinct thing and Parliament another distinct thing, but also that the people and Parliament may have divergent and even antagonistic interests.

The Assembly may be constituted as a Tribunal of Justice in order to try

the President for offenses of *high treason*, and the members of the Council of Government for offenses against the security of the State. The Solicitor General of the Nation acts as prosecutor. What are the offenses of high treason and the offenses against the security of the State? What shall be the procedure of the prosecution and the trial? All these were left to the discretion of the Assembly itself. Here is another weapon which may be wielded at its proper time. And it should be born in mind that not only the President and the Secretaries may be impeached by the Assembly in this respect, but also the Chief Justice of the Supreme Court and the Solicitor General.

There is nothing more delicate than the determination of these offenses committed by high executive officials. In Spain and France, they have not attempted it, or if they have it was with some fear, because it could not have produced the desired effect. A Spanish orator maintained that their definition would not be expedient, because then the Government would be handicapped in governing, specially during abnormal times, for fear of incurring some liability so specified; on the other hand, if said offenses were defined, then the Ministers could very easily find some exceptional cases in which they could act without incurring any liability, which would be worse. I believe this provision was adopted more as a threat and as another ostentation of the power of legislative Assemblies or Parliaments than anything else.

We have now come to the institution of the Permanent Commission. It is a body elected by the Assembly from its members in order to act in its stead during the close of its sessions. Its powers are: to determine whether there is any cause for *impeachment*; to convene the Assembly in cases it has to sit as a Tribunal of Justice, or else, to extraordinary sessions, when it is so required; and, in general, to take the place of said Assembly in its constitutional functions, with the exception of those strictly legislative. It may be said that the Permanent Commission has been established by the Constitution of Malolos for no other purpose than to watch the President and his Cabinet, and to supervise their acts.*

The Permanent Commission would seem to you as the most antiquated piece of this governmental machinery. The desire to have a *continuous surveillance* is the only justification for its establishment. In Spain itself, where the legislators of Cadiz instituted it in 1812, because there as here in the Philippines there was then the desire to place the Cortes above the King, it was entirely forgotten in later Constitutions. They had it when the National Assembly of 1873 was dissolved and when the Constituent Cortes of 1859 suspended its work; but it existed not by virtue of any constitutional provision,

* Vide, Calderón, loc. cit.

but simply by resolution of the Cortes themselves. It would be difficult to find it in any other country, with the exception of some South American republics, where it still subsists although in a state of languishing existence. There are those who already foretell its near extinction, like the learned D. Justo Arosemana, a lawyer of Colombia and Chile,** because it is considered a piece destined to fossilize on account of the ever growing preponderance of the Chief Executive of the State. There are others, on the other hand, who defend it with fervor, as the not less renowned D. Justino Jiménez de Aréchaga*** a commentator of the Constitution of Uruguay, who claims for the Permanent Commission a better future for the benefit of the people.

The constitutionalists of Malolos could not dispense with an organ which tended once more to satisfy the requirements of their plan. As I have said elsewhere**** the Permanent Commission is an attempt at the realization of a continuous Assembly, because it was believed that in this way the exigencies of a regime of the parliamentary type could be best complied with. And the reason is obvious. The Executive being a permanent power, and the right of surveillance being inherent in Parliament, it is but just that this right should be exercised during the whole time the power to be supervised is exercising its functions. It was for this reason, perhaps, that a well known French author said that parliamentary government, in particular, leads inevitably to the quasi permanence of representative Assemblies. †

The immunity of the Chief Executive of the State and the ministerial responsibility, are some of the most characteristic consequences of the system adopted. The Ministers are responsible jointly as well as individually to the Parliament for their policy. The Chief Executive of the nation cannot execute any act without the countersignature of the proper Minister. If the chief of the State were made responsible to Parliament like the Ministers, he would become a disputable chief. The waves of the political tempest would reach him. The ebb and flow of public opinion would cause his authority to wane. He would lose in stability, in greatness, and in majesty. And the Government would bear the loss with him.

Whatever may be the tendencies of modern democracy, (the facts which Bagehot points out to us in his famous work †† are still beyond dispute. The people prostrate themselves before the fiction of an imposing authority. If

* Vide, Pi and Margall, History of Spain.

** Vide, Constitutional Studies over the Governments of Latin America.

*** Vide, Legislative Power.

**** Vide, my pamphlet, "The Constitution of Malolos."

† Eamein, Elements du Droit Constitutionnel.

†† English Constitution.

that authority should stoop down and mingle in the daily strife, it would lose its prestige and they would lose their respect to it. There are two governmental contrivances, one of which passes unnoticed: it is the *outward semblance*. The other is *efficiency*. The Chief of the Nation would be the apparent chief, because the *King reigns but does not govern*. The Cabinet is the efficient part. Who would doubt that, in a country like ours, which had just shattered the bonds of a monarchial tradition, and laboring under the weight of its strong religious tradition—two traditions which taught her to worship form—ideas would take the same ornamental course?

The ministerial responsibility is another method of accentuating the predominance of the Legislature. The Ministers or members of the Cabinet have a seat in Parliament with the rights to speak and defend themselves. Even though the Cabinet is nothing more than a *Committee of Parliament*, there exist, as I have said, two modes of action: one is when Parliament directs the Cabinet, and the other, when the Cabinet directs Parliament. By the former, governments are more frequently changed; by the latter, Parliaments are more frequently dissolved.* The French system having been followed in the Malolos Constitution, it is natural to predict that the Filipino Government would have adopted the former practice. This is borne out by the fact that in much less than one year, that is, from the promulgation of the Constitution in January, 1899, till the breaking up of the Revolutionary Government, in the same year, two Cabinets succeeded each other, the Mabini Cabinet and the Paterno Cabinet, and were it not for the death of General Luna, perhaps a third would have followed: the Luna Cabinet.

In order to make ministerial responsibility effective, Congress disposes of these means: the *right of censure* and the *right of interpellation*. The first is a collective right; the second, is individual. The Constitution does not expressly mention the right to interrogate or examine, nor the right of investigation or of *parliamentary inquest*. Nevertheless, it is to be supposed that these exist as a legitimate incident of the system. The interrogatory or *examination* relates to matters of small importance and the Minister may answer in the act. It is not so in the case of *interpellation*, which is announced in written form signed by a number of Representatives, and the date of whose discussion is previously set. The interpellation when skillfully directed and based upon motives of real importance, is a characteristic arm for enforcing

* Vide, Garner, Cabinet Government in France.

ministerial responsibility. The right of *investigation* is inherent in all Legislative Assemblies and is still recognized in North American Parliamentary Law. These *interrogatories, interpellations, and investigations*, constitute the source of information by which the popular representatives learn *how the country is governed*, a thing which is difficult to ascertain in a government of the residential type. If the representatives believe that the country is *badly governed*, they can resort to a *vote of censure*, not only against a particular Minister, but also against the whole Cabinet.

Such is a general sketch of the most interesting features of the constitutional plan for the Philippine Republic. You will readily divine its primordial idea, which is to avoid all despotism. All means have been resorted to in order to obtain this result. The constitutionalists of Malolos, in their anxiety to establish immediately the basis of a republican government, did not take into account the fact that a few steps from the Convent of Barasoain, where the convention was being held, cannons were being prepared and rumors of war were rife. There is nothing more repugnant to the spirit of the new Constitution as disorder and chaos. The new Constitution was passed for normal times and not for times of war. During war times, it would be necessary to concentrate the power in the hands of a single individual, who would rule the country, repress treason and disorder, and organize the forces against the enemy. Thus thought Mabini, the *Sublime Paralytic*. And Mabini was not then only a mere private counsellor of Aguinaldo: he was the Prime Minister, the head of the Government. For this reason, when the Constitution, approved by the Assembly, was sent to Aguinaldo for its promulgation, Mabini did all in his power to suspend it, suggesting a series of amendments* which increased the powers of the President, and which, as a matter of fact, took away some powers from the Assembly to confer them back upon the President. It was the old struggle between absolutists and constitutionalists that was being repeated. They were two opposite criterions which were again placed against each other. Congress rejected the amendments, the Committee charged to study them having rendered a lucid and combative report** which protested in the name of modern principles, against tyranny, despotism, and arbitrariness, Mabini met another failure, and the Constitution was promulgated on January 21, 1899.

* Vide, Message of President Aguinaldo of January 1st, 1899. (Appendix B of my pamphlet, "The Constitution of Malolos.")

** Vide, Appendix C of my pamphlet, "The Constitution of Malolos."

Which of the two tendencies was the best for those days, History will decide. At all events, whatever be the verdict of posterity, there remains the indisputable fact that the Philippine Revolution was not, as it has been said, a racial war, a licentious outburst of violent passions, but was a war pledged to and determined for the ideals of liberty, democracy, and constitutionalism.