May The National Assembly Pass A Law Nationalizing Philippine Labor?

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DURING the second session of our National Assembly, an attempt was made to nationalize Philippine labor. It was intended to protect native laborers and to regulate the employment of foreign laborers in the Philippines. The act was deemed necessary because of the provision in our Constitution providing for the nationalization of our national resources. It was argued, that hand in hand with this provision, there should be an act providing for the nationalization of Philippine labor. It was further contended that the development or exploitation of our public agricultural lands, timber lands, or mineral lands, are now limited to Filipino citizens and to corporations sixty per centum of the capital of which, is owned by Filipinos. American citizens have, of course, the same rights as the Filipinos during the Commonwealth period. The proposed act, if enacted into a law and approved by the chief executive, would produce serious consequences, especially as regards foreign countries who would be affected. It is the purpose of the writer to discuss the constitutional aspects of such an act and to determine whether the National Assembly may validly pass such a law or not.

Under the intended act, before an alien could be employed by any person, firm, or corporation, he must secure an employment permit from the Secretary of Labor. Section 4 of the Act provides that, "it shall be the duty of managers, superintendents, or agents of factories, shops, industrial or commercial establishments, or other centers or places of labor where aliens are employed to make the necessary adjustments so that one year after the approval of this Act, the total number of aliens in their employ shall not exceed seventy per cent, sixty per cent after the second year, fifty per cent after the third year, forty per cent after the fourth year, and provided that after the end of the fifth year, the total number of citizens of the Philippines or of the United States employed in any factory, shop, establishment or other center of labor shall not be less than eighty per cent."

Section 8 of the Act provides that, "it shall be unlawful for any alien to exercise the profession of chauffeur or driver of motor or horse-driven vehicles."

May the National Assembly pass such an act without violating any provision of our Constitution? Would there not be an unlawful encroachment on the rights of aliens?

Our answer to the first question is in the negative. Section 1, paragraph 1, of Art. III of our Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This provision refers to the word 'person' and the question is, does the word 'person' include both citizens and aliens? This provision of

the Constitution was derived from the Fourteenth Amendment to the American Constitution, known as the due process clause and the equal protection clause.

The Supreme Court of the United States decided that the due process clause and the equal protection clause are not confined to the protection of citizens. They are universal in their application, covering all persons within the territorial jurisdiction, without regard to any difference of race, color, or nationality; and the equal protection of the law is a pledge of the protection of equal laws. (*Yick Wo vs. Hopkins, 118 U. S. 356; Kentucky vs. Powers, 201 U. S. 1; Richmond Cemetery Co. vs. Walker (Ky.) 97 S. W. 34*)

Again, the United States Supreme Court, through Justice Hughes, declared as unconstitutional an act passed by the state of Arizona in 1914, which provided that, "any company, corporation, partnership, or individual who is, or who may hereafter become an employer of more than five workers at any one time, in the state of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty per cent qualified electors or native-born citizens of the United States or some sub-division thereof," on the ground that it violates the Fourteenth Amendment. Justice Hughes cited the ruling in the case of *Yick Wo vs. Hopkins* and also stated that the word "person" includes both citizens and aliens. It was sought to justify the act as an exercise of the power of the state to make reasonable classification in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality, the ordinary means of livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity which was the purpose of the Amendment to secure. If this could be denied upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be meaningless. (*Truax vs. Raich, 239 U. S. 33*).

A state, of course, has the right to admit or not to admit aliens. That falls within the discretion of the state. But having once lawfully admitted an alien, the state may not deny to him the opportunity of earning a livelihood. That would be equivalent to a denial of entrance and abode for, in ordinary cases, a person can not live where he can not work.

It may be contended that the exclusion as provided is not a total exclusion, for twenty per cent of the laborers may still be aliens. But the fallacy of this argument lies in the fact that if the state could validly make the percentage twenty per cent, it could make the percentage less if it so desires.

Labor as a commodity is deemed to be property (*The Antelope, 10 Wheat. 66, 6 U. S. [L. ed.] 268; Gillespie vs. People, 188 Ill. 176, 58 N. E. 1007, 80 A. S. R. 176*), and every man has a natural right to the fruits of his own industry. The laborer has the same right to sell his labor, and to contract with reference thereto, as any other property owner.

(*Adair vs. U. S., 208 U. S. 161*) Every man has the right to labor or refuse to labor for another, and he may base such refusal on any grounds he may choose, and even on mere whim, prejudice or malice. (*Arthur vs. Oakes, 63 Fed. 310, 25 L. R. A. 414; Coffeyville Vitrified Brick & Tile Co. vs. Perry, 69 Kan. 297, 76 Pac. 848*). The right to labor or to employ labor and to make contracts with respect thereto, upon such terms as may be agreed upon, besides being a property right, (*State vs. Missouri Tile & Timber Co., 181 Mo. 536, 103 A. S. R. 614.*) is incident to the freedom of the individual, and is as fully protected by the law as any other personal or private right. (*Re Morgan, 26 Colorado 415, 58 Pac. 1071, 77 A. S. R. 269, 47 L. R. A. 52; Singer vs. 72 Ind. 464, 19 Atl. 1044, 8 L. R. A. 551.*)

In order that an alien may invoke Section 1, paragraph 1 of Art. III of our Constitution, he must be within the territorial jurisdiction of this country, otherwise the provision would not apply to him following the same rulings regarding the Fourteenth Amendment.

The provision of the Fourteenth Amendment to the Federal Constitution that no state shall deny to any person within its jurisdiction the equal protection of the laws, applies only to persons physically present within the jurisdiction of the State protection of which laws they invoke. (*State v. Travelers Ins. Co., 70 Conn. 590; 40 Atl. 465; 66 A. S. R. 138*).

Where an alien is lawfully within the United States, he is entitled to the benefits of the guarantee of life, liberty, and property, secured by the Constitution to all persons. His personal rights when he is in this country and such of his property as is here during his absence, are protected as fully as those of a citizen. (*Lem Moon Sing vs. U. S., 158 U. S. 538*).

Some of our assemblymen may have been guided by the thought that hand in hand with the provision providing for the naturalization of our natural resources there should be a similar provision providing for the nationalization of Philippine labor. Decisions of the Supreme Court of the United States recognize the fact that where the discrimination against aliens pertains to the regulation or distribution of the public domain, or of the common property or the resources of the people of the state, the enjoyment may be limited to its citizens as against both aliens and the citizens of other states. In other words, while the equal protection clause applies to both citizens and aliens, yet there are certain cases where a statute may validly favor the citizen and discriminate against the alien.

Thus, a state may restrict the right to plant oysters in its rivers on the ground that the regulation related to the common property of the citizens of the State. (*McCreody vs. Virginia 94 U. S. 391, 396*). It may restrict to its own citizens the enjoyment of its game and to that end prohibit aliens from owning or possessing rifles or shotguns. The discrimination here has for its object the protection of wild game within the state with respect to which it was said that the state could exercise its preserving power for the benefit of its own citizens, if it pleased. (*Patstone vs. Pennsylvania, 232 U. S. 138, 145, 146*). It may make the

same discrimination in the distribution of its public lands (*McCready vs. Virginia, Supra*); its mines (*Justice Min. Co. vs. Fee 21 Colo. 260; 52 Am. State Report 216; 40 Pacific 444*); its forests or other natural resources. It may deny to aliens the right to hold or inherit real estate, except where the right has been secured by treaty (*Blythe vs. Hinckley 180 U. S. 333, 341, 45 L. eda. 557, 562*). The state may pass a statute forbidding the employment of aliens on public works on the ground that the construction of public works involve the expenditure of public money. (*People vs. Crane 214 N. Y. 154*).

But where the regulation or discrimination involves an ordinary private enterprise the law cannot be sustained as valid. (*Truax vs. Raich, supra*).

Racial distinctions, on the other hand, if based on substantial differences, do not constitute discrimination. A law which forbids inter-marriage between two races takes note of the inherent differences between them and of the undesirable consequences of mingling the two. Such a law does not deny to either race any right which is accorded to the other. Racial distinctions in law are usually ascribed to one or more of the following reasons: the prevention of race conflicts, the preservation of race purity by the prevention of inter-marriage or of illicit sex relations, or the existence of race peculiarities which require recognition in special legislation. Statutes may be framed to attain these objectives which will not be obnoxious to the equal protection clause of the Fourteenth Amendment (*Evans, Cases on Constitutional Law, Second Edition p. 1080*).