

THE LEGAL FRAMEWORK OF ALIEN INTERESTS IN LAND AND OTHER NATURAL RESOURCES IN THE PHILIPPINES: 1900-PRESENT

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I. ALIEN ECONOMIC DOMAIN

For nearly four centuries without interruption, and up to this time, the law prevailing in the Philippines has accorded to aliens and foreign companies the privilege of acquiring, holding and enjoying rights and interests in land and other natural resources of the Philippines. By "aliens and foreign companies" is meant individual persons other than natives of the Philippines, and the entities or enterprises controlled by them. Under Spanish colonial law, these were, principally, subjects of the Spanish Crown and the juristic entities under their control, as well as religious organizations—including religious orders, congregations, and societies. Under the American colonial law, these were American citizens and corporations controlled by them, and also religious orders, congregations, and societies administered by American citizens. During the Republic, two periods must be noted. During the Parity Amendment to the 1935 Constitution, American nationals and entities controlled by them continued to enjoy the same rights to land and natural resources as Filipino citizens. Under the 1973 Constitution, rights acquired under the aforesaid Parity Amendment are continued, but subject to a resolutory condition.¹ Additionally, lands and other natural resources were opened to aliens and foreign companies through two legal devices: (a) service contracts, and (b) international treaties and agreements entered into by the Chief Executive.²

The totality of the holdings in land and other natural resources of aliens and their companies, whether direct or indirect, and whether consisting of dominical rights or lesser interests, comprise and constitute the chief segment of the alien economic domain in the Philippines today.

The other important segments of the alien economic domain in the Philippines are:

1. Alien business enterprise, consisting of companies and entities controlled through direct investments, or indirectly through loan agreements, franchising agreements, etc.

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¹ CONST. art. XVII, sec. 12.

² *Ibid.*

2. Alien holdings of cultural property in diverse forms, chiefly in the form of patents, trademarks and trade names, copyright and other industrial property, and financial paper, public as well as private.

This paper is confined to the legal framework defining alien holdings and interests in land and natural resources in the Philippines today.

II. PRINCIPAL INSTRUMENTS OF THE LEGAL FRAMEWORK

The alien domain in land and natural resources of the Philippines is defined by a framework of norms and rules in Philippine law, which were instituted by a number of key legal instruments. Such legal instruments include the following:

1. The Treaty of Paris of 1898 between the Kingdom of Spain and the United States of America.

2. The Act of the U.S. Congress of July 1, 1902, better known as the Philippine Bill of 1902 or the Spooner Bill.

3. The Philippine Autonomy Act of 1916, otherwise known as the Jones Law.

4. The First Philippine Independence Act, known as the Hare-Hawes-Cutting Law.

5. The Philippine Independence Act, or Tydings-McDuffie Law.

6. The Philippine Constitution of 1935.

7. The Philippine Constitution of 1973.

The continuity and persistence of the Legal Order or System in the Philippines since 1900 up to the present, gives continuing force, effectivity and vitality to all the foregoing legal instruments, in the matter of rights and privileges acquired thereunder by aliens and their companies or entities. Insofar as such rights and privileges are held and enjoyed today, directly or indirectly, by aliens and their companies or entities, the resultant interests in land and other natural resources of the Philippines continue to form part of the alien economic domain in the Philippines.

III. ALIEN INTERESTS UNDER THE TREATY OF PARIS

Under the Treaty of Paris,³ which terminated the Spanish-American War, the Philippines ceased to be a colony of the Kingdom of Spain, and by cession, it became a territory acquired by the United States of America.

³ Treaty of Peace Between the Kingdom of Spain and the United States of America, December 10, 1898, [hereinafter referred to as Treaty of Paris]. MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION, 55 (1978).

Spain cedes to the United States the archipelago known as the Philippine Islands. . . .⁴

The civil rights and political status of the native inhabitants in the territories ceded to the U.S. shall be determined by the Congress.⁵

Pursuant to specific provisions of said Treaty, the landed and other interests of Spanish subjects, of entities controlled by them, of ecclesiastical bodies, and of other aliens in the Philippines, were explicitly recognized by, and made binding on, the United States. Among such interests expressly recognized were:

(1) Those of ecclesiastical or civil bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories.⁶

(2) Those of private individuals of whatever nationality.⁷

(3) Those of Spanish subjects residing in the Philippines, who retained all their rights of property, including the right to sell or dispose of such property or its proceeds.⁸

ARTICLE VIII

In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba; and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect to documents in the archives of the islands referred to above.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess

⁴ Treaty of Paris, Art. III.

⁵ Treaty of Paris, Art. IX, 2nd par.

⁶ Treaty of Paris, Art. VIII, 2nd par.

⁷ *Id.*

⁸ Treaty of Paris, Art. IX, 1st par.

in respect of the official archives and records, executive as well as judicial in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

ARTICLE IX

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The obligation to recognize and protect alien landed interests as above provided for in the Treaty of Paris, was rigorously adhered to and faithfully observed by the United States, in its legislation and other legal acts concerning the Philippines. In his Instructions to the Second Philippine Commission, President McKinley gave explicit affirmance of the recognition by the United States of the alien interests provided for in the Treaty of Paris.⁹ Such Instructions, issued by the U.S. President in his capacity as Commander-in-Chief of the U.S. Armed Forces in time of war, had the force and effect of law. In its paragraph twelve, said Instructions stated:

It will be the duty of the Commission to make a thorough investigation into the titles of the large tracts of land held or claimed by individuals or by religious orders; into the justice of the claims and complaints made against such landholders by the people of the Islands, or any part of the people, and to seek by wise and peaceful measures a just settlement of the controversies and redress of the wrongs which have caused strife and bloodshed in the past. In the performance of this duty the Commission is enjoined to see that no injustice is done; to have regard for substantial right and equity, disregarding technicalities so far as substantial right permits, and to observe the following rules: That the provision of the treaty of Paris pledging the United States to the protection of all rights of property in the Islands, and as well the principle of our own Government which prohibits the taking of property without due process of law, shall not be violated; that the welfare of the people of the Islands, which should be a paramount consideration, shall be attained consistently with this rule

⁹President McKinley's Instructions to the Second Philippine Commission, April 7, 1900, 1 PUBLIC LAWS lxiii-lxviii (1900).

of property right; that if it becomes necessary for the public interest of the people of the Islands to dispose of claims to property which the Commission finds to be not lawfully acquired and held, disposition shall be made thereof by due legal procedure, in which there shall be full opportunity for fair and impartial hearing and judgment; that if the same public interests require the extinguishment of property rights lawfully acquired and held, due compensation shall be made out of the public treasury therefor...

Said Instructions were validated by the Spooner Amendment to the Army Appropriation Bill of March 2, 1901, and were subsequently ratified in the Act of Congress of July 1, 1902.

Apart and separately from its ratification of the aforesaid executive act, the Philippine Bill of 1902 likewise recognized, protected and preserved the alien rights to landed interests that were safeguarded under the Treaty of Paris.¹⁰

SECTION 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the government of the United States, are hereby placed under the control of the government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this act.

Similar recognition and protection to such alien interests safeguarded under the Treaty of Paris, was likewise expressly provided for under Sections 1 and 9 (in relation to Section 3) of the Philippine Autonomy Act of 1916, known as the Jones Law.¹¹

A similar safeguarding of such alien interests as recognized under the Treaty of Paris, was likewise made under the first Philippine Independence Act, otherwise known as the Hare-Hawes-Cutting Law, which expressly provided in Paragraph 5 of Section 10, that the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations of the United States under the Treaty of Paris.¹²

¹⁰ Philippine Bill of July 1, 1902, 32 Stat. 691 (1902) entitled "An Act Temporarily to Provide for the Administration of the Civil Government in the Philippine Islands." The Philippine Bill was for over fourteen years the Organic Act of the Philippine Islands.

¹¹ The Philippine Autonomy Act (Jones Law) of August 29, 1916 entitled "An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government of Those Islands," 32 Stat. 545 (1916). The Jones Law became the model for the 1935 Constitution.

¹² The First Philippine Independence Act (Hare-Hawes-Cutting Law) of January 13, 1933, 47 Stat. 761 (1933). It provided for a ten-year transition period during which the government of the Philippine Islands was to be known as the Commonwealth of the Philippine Islands. It provided for the operation of the government under a constitution formulated by the people themselves.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

Such safeguarding of alien interests recognized under the Treaty of Paris was likewise provided for in the Philippine Independence Act, known as the Tydings-McDuffie Law, which provided in Paragraph 4 of subsection (b) of Section 2, that the government of the Philippines is required to assume all the obligations of the United States under the Treaty of Paris.¹³

(4) That the Government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

In Article XVII of the 1935 Constitution as amended, which set forth the special provisions effective upon the proclamation of the independence of the Philippines, it is expressly provided in Subsection (4) of Section 1 that "the Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Paris with Spain ceding the Philippine Islands to the United States." Thus, all alien interests recognized in the law of the Kingdom of Spain, as subsisting in lands within the Philippines, and safeguarded in the Treaty of Paris, remained insofar as their existence continued, valid and binding obligations of the Republic of the Philippines.

IV. ALIEN INTERESTS UNDER AMERICAN LEGISLATION AND COLONIAL LAW

A. Alien Interests in Minerals and Mineral Lands

Under the Philippine Bill of 1902, valuable mineral deposits, and the lands in which such deposits were found, were declared open to occupation and purchase by citizens of the United States, and by citizens of the Philippine Islands.

SECTION 21. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands: Provided, That when on any lands in said Islands entered and occupied as agricultural lands under the provisions of this act, but not patented, mineral deposits have been found, the

¹³ The Philippine Independence Act (Tydings-McDuffie Act) of March 24, 1934, 48 Stat. 459, 29 PUBLIC LAWS, Appendix 263 (1934) entitled "An Act To Provide for the Adoption of a Constitution and a Form of Government for the Philippine Islands, and for Other Purposes." [hereinafter referred to as the Tydings-McDuffie Law].

working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the government of said Islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the government for the same as mineral claims.

The above stated provision of the Philippine Bill of 1902 was initially implemented by Act No. 624 of the Philippine Commission (February 7, 1903), which authorized in Section Thirteen thereof the recording of mining claims only of (a) U.S. citizens and (b) citizens of the Philippine Islands.¹⁴

SEC. 13. No mining claim shall be recorded unless the declaration be accompanied by proof that the locator, or each of them in case there be more than one, is a citizen of the United States of America or of the Philippine Islands. The proof of citizenship required by this section may be that set forth in section thirty-five of the Act of Congress approved July first, nineteen hundred and two.

Under the Philippine Autonomy Act of 1916, better known as the Jones Law, the Philippine Legislature was authorized to legislate on the public domain in the Philippines, but by express limitation in said Act of the U.S. Congress, as set forth in Section 9 thereof, acts of the Philippine Legislature having reference to lands of the public domain, timber and mining, thereafter enacted shall not have the force of law, until approved by the President of the United States of America.

SECTION 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the act of Congress approved July first, nineteen hundred two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said act of Congress, are hereby placed under the control of the government of said Islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: *Provided*, That upon the approval of such an act by the Governor-General, it shall be by him forthwith transmitted to the President of the

¹⁴ Act. No. 624, February 7, 1903—"An Act Prescribing Regulations Governing the Location and Manner of Recording Mining Claims, and the Amount of Work Necessary to Hold Possession of a Mining Claim, Under the Provisions of the Act of Congress Approved July First, Nineteen Hundred and Two entitled 'An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes'."

United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: *Provided further*, That where lands in the Philippine Islands have been or may be reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said Islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said Islands.

In the various enactments of the Philippine Legislature concerning the public domain of the Philippines, the rights of citizens of the United States to acquire portions thereof by grant, sale or lease was always expressly provided for. Of particular significance are the following Acts:

1. Act No. 2719¹⁵ regulating access to coal deposits within the Philippines, which provides in its Section 2:

SEC. 2. Any unreserved, unappropriated coal-bearing public land may be leased by the Secretary of Agriculture and Natural Resources in blocks or tracts of not less than four hundred nor more than twelve hundred hectares each, in such manner as may, in the opinion of the Secretary of Agriculture and Natural Resources, allow the economic exploitation of the coal. The lease may be granted to any person above the age of twenty-one years who is a citizen of the Philippine Islands or of the United States, or to any association of such persons, or to any corporation organized under the laws of the Philippine Islands: *Provided*, That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States or the Philippine Islands: *And provided further*, That any person, association, or corporation qualified to become a lessee under this Act, and owning any located or patented claim to any coal lands in the Philippine Islands, may, within one year from the passage of this Act, enter into an arrangement with the Secretary of Agriculture and Natural Resources whereby such claim shall be fully relinquished to the Government as a condition precedent to acquiring a lease under the provisions of this Act, said owner, in consideration of such relinquishment, being given the preference in applications for leasing contiguous tracts. The Department Secretaries, acting jointly, are authorized to pay a compensation in exchange for such relinquishment if they see fit.

2. Act No. 2932,¹⁶ regulating access to petroleum and mineral oil, deposits in the Philippines.

SECTION 1. All public lands containing petroleum or other mineral oils and gas, on which no patent at the date this Act takes affect has been

¹⁵ "An Act to Provide for the Leasing and Development of Coal Lands in the Philippine Islands," May 14, 1917.

¹⁶ "An Act to Provide for the Exploration, Location and Lease of Lands Containing Petroleum and Other Mineral Oils and Gas in the Philippine Islands," August 31, 1920.

issued, are hereby withdrawn from sale and are declared to be free and open to exploration, location and lease by citizens of the Philippine Islands or of the United States and by associations and corporations wholly composed of citizens of the Philippine Islands or of the United States or both: *Provided, however,* That parties having heretofore filed claims for any lands containing said minerals shall be given preference to lease their respective claims, provided they file a petition to that effect within six months from the date of the approval of this Act.

B. Alien Interests in Agricultural Land

The Philippine Bill of 1902 empowered in its Section Fifteen, the Philippine government to provide by law for the grant, sale or conveyance of lands of the public domain in the Philippines, other than timber land or mineral land. Pursuant to such authority, the Philippine Commission enacted Act No. 926 (Oct. 7, 1903), which expressly permitted U.S. citizens to acquire lands of the public domain by homestead, by sale or by lease.

Section Fifteen of the Philippine Bill of 1902 states:

SECTION 15. The government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons. *Provided,* That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee may not alienate or encumber said land or the title thereto, but such restriction shall not apply to transfers of rights and titles of inheritance under the laws for the distribution of the estates of the deceased.

Pertinent provisions of Act No. 926 are as follows:

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any insular possession thereof, over the age of twenty-one years, or the head of a family, may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands, shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said Islands or who has had the benefits of any gratuitous

allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

. . . .

SEC. 10. Any citizen of the Philippine Islands, or of the United States, or of any insular possession thereof, or any corporation or like association of persons organized under the laws of the Philippine Islands or of the United States or any State, Territory, or insular possession thereof, and authorized to transact business in the Philippine Islands, may purchase any tract of unoccupied, unappropriated, and unreserved non-mineral agricultural public land in the Philippine Islands, as defined in the Act of Congress of July first, nineteen hundred and two, not to exceed sixteen hectares for an individual or one thousand and twenty-four hectares for a corporation or like association, by proceeding as hereinafter provided in this chapter: *Provided*, That no association of persons not organized as above and no mere partnership shall be entitled to purchase a greater quantity than will equal sixteen hectares for each member thereof.

*C. Reserved Rights of U.S. Citizens and
their Companies During the Commonwealth*

To ensure that the rights of U.S. citizens and their companies to acquire land and other natural resources in the Philippines would be maintained during the Commonwealth period, the enabling federal statutes contained express requirements and stipulations to such end or purpose.

The first Philippine Independence Act, known as Hare-Hawes-Cutting Law, directed that certain provisions should be adopted in the Philippine Constitution, as provisions of an ordinance appended thereto. One of the mandated provisions is that citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of citizens and corporations, respectively, thereof.

In the Philippine Independence Act, known as Tydings-McDuffie Law, a similar requirement was imposed. Certain mandatory provisions were required to be part of an ordinance to be appended to the Constitution of the Philippines. One of the mandated provisions is that citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof¹⁷

In the Ordinance appended to the Constitution of 1935, exactly the above-mentioned provision mandated in the Philippine Independence Act was set forth in subsection (17) of Section One thereof.

*D. Mandatory Vesting of Alien Rights to Land
and Other Natural Resources*

The treatment of alien interests in land and other natural resources in the Philippines, as vested rights under the Constitution of 1935, was

¹⁷ Tydings-McDuffie Law, sec. 2, subsec. (a), par. 16.

essential to their continued existence, recognition and protection during the Commonwealth period, and during the period of the Republic. Appropriate requirements were mandated in the federal legislation dealing with Philippine independence, to ensure such treatment.

Two approaches were utilized to ensure the treatment of alien interests as vested rights. The first approach was to define the public domain transferred to the Government of the Commonwealth of the Philippines. In both Independence Acts, identical provisions made it clear that such public domain was not co-extensive with the entirety of Philippine territory. The transfer was made only of the property and rights acquired by the United States in the Philippine Islands under the Treaty of Paris and under the subsequent treaty between Spain and the United States concluded at Washington D.C. on November 7, 1900. Such property and rights acquired, of course, did not comprehend, and do not embrace the pre-existing properties and rights which the United States had bound itself to recognize, respect, and safeguard. Then, from the property and rights acquired by the United States must be deducted and exempted from the transfer two major items: (a) areas designated as military and naval bases and (b) those lands and other interests which have been sold or disposed of in accordance with law. Thus, the Government of the Commonwealth, as successor government, did not succeed and acquire the entire Philippine territory. Exempted from such succession and acquisition were: (1) the pre-existing rights and properties that the U.S. government was pledged to recognize and protect under the Treaty of Paris, for logically, the U.S. government could not transfer to the Commonwealth what it never acquired under the Treaty of Paris; (2) areas designated as military and other reservations; and (3) those already sold or disposed of in accordance with law, i.e., the law during the American colonial period.

The following provision appears in both Independence Acts:

TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH

SEC. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this act, except such land or other property as has heretofore been designated by the President of the United States for military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

The other approach is more direct. By appropriate mandatory provisions, legal duties are imposed on the Philippine government to recognize and safeguard the pre-existing rights of aliens to lands and other natural

resources in the Philippines. In both Independence Acts, it is required that the Philippine Constitution should contain certain prescribed or mandatory provisions, which would become effective as of the date of the proclamation of the independence of the Philippines. One of such mandatory provisions is that "all existing property rights of citizens or corporations of the United States shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens of the Philippine Islands."¹⁸

As previously pointed out in the discussion of recognition of rights as provided in the Treaty of Paris, the two Independence Acts also require the following mandatory provision, effective on the date of the proclamation of the President of the United States recognizing the independence of the Philippines: "(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines."¹⁹

In line with and pursuant to such provisions prescribing that accrued and existing interests in land and natural resources should be recognized and safeguarded as vested rights, the Constitution of 1935 expressly declared the regalian doctrine adopted in regard to the public domain in the Philippines, as set forth in Section 1 of Article XIII "subject to any existing right, grant, lease or concession at the time of the inauguration of the Government established under the Constitution."

This meant the exclusion from the public domain referred to in said Section 1 of Article XIII of the 1935 Constitution, of the following:

1. All alien interests recognized and protected under the Treaty of Paris, except those reverted to the State through eminent domain, such as the Friar Lands.
2. All alien interests acquired under the above-mentioned federal legislation and the implementing colonial legislation.
3. All those designated by the United States President for military and other reservations of the Government of the United States.

Under the Constitution of 1935, all these colonial interests are vested alien rights, which the sovereign will of the Filipino people must safeguard and protect.

V. ALIEN INTERESTS UNDER THE LAW OF THE COMMONWEALTH

We have noted above that, pursuant to the mandatory provisions of the Philippine Independence Act, the Constitution for the Philippines carried

¹⁸ Tydings-McDuffie Law, sec. 2, subsec. (b), par. 1.

¹⁹ CONST. (1935), art. XVII, sec. 1, subsec. (1).

an Ordinance appended thereto, which imposed the following requirement, among others: "Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the rights of the citizens and corporations, respectively, thereof."²⁰

In implementation of this mandate of the Constitution, legislation during the Commonwealth on public lands and natural resources explicitly provided for the rights of U.S. citizens and their corporations to lands and other natural resources of the public domain.²¹

In regard to public agricultural lands, it is provided under Commonwealth Act No. 141:²²

SEC. 125. The provisions of sections twenty-two, twenty-three, one hundred and twenty-two, and one hundred and twenty-three of this Act, and any other provision or provisions restricting or tending to restrict the right of persons, corporations, or associations to acquire, hold, lease, encumber, dispose of, or alienate land in the Philippines, or permanent improvements thereon, or any interest therein, shall not be applied in cases in which the right to acquire, hold or dispose of such land, permanent improvements thereon or interests therein in the Philippines is recognized by existing treaties in favor of citizens or subjects of foreign nations and corporations or associations organized and constituted by the same, which right, in so far as it exists under such treaties, shall continue and subsist in the manner and to the extent stipulated in said treaties, and only while these are in force, but not thereafter.

SEC. 127. During the existence and continuance of the Commonwealth, and before the Republic of the Philippines is finally established, citizens and corporations of the United States shall enjoy the same rights granted to citizens and corporations of the Philippines under this Act.

SEC. 128. During the period specified in the next preceding section, the President of the Philippines, upon receipt of the order of the President of the United States, shall, by proclamation, designate such land as the latter may set aside for military, naval or other reservations for use of the Government of the United States.

In regard to mineral lands, it is provided in Section 110 of Commonwealth Act No. 137:²³

SEC. 110. During the Commonwealth of the Philippines, citizens of the United States or corporations organized and constituted under the laws of the United States or of any state or territory thereof, and authorized to transact business in the Philippines, shall enjoy the same rights under this Act as citizens or corporations of the Philippines.

²⁰ Tydings-McDuffie Law, sec. 2, subsec. (a), no. 16.

²¹ CONST. (1935), art. XVII, sec. 1 (1).

²² "An Act to Amend and Compile the Laws Relative to Lands of the Public Domain," November 7, 1936.

²³ "An Act to Provide for the Conservation, Disposition and Development of Mineral Lands and Minerals," Nov. 7, 1937.

In regard to pasture lands, it is provided under Commonwealth Act No. 452:²⁴

SEC. 3. The Bureau of Forestry shall have jurisdiction and authority over the administration, protection, and management of pasture lands and over the granting of leases or permits for pasture purposes to any citizen of lawful age of the Philippines and any corporation or association of which at least sixty per centum of the capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of the Philippines for an area of not more than two thousand hectares in accordance with the provisions of this Act. Such lease shall run for a period of not more than twenty-six years, but may be renewed once for another period of not to exceed twenty-five years, in case the lessee shall have made important improvements, which in the discretion of the Secretary of Agriculture and Commerce, justify a renewal.

In regard to petroleum and natural gas deposits, it is provided in Commonwealth Act No. 351:²⁵

SEC. 2. In order to carry out and effectuate said policy, the President of the Philippines, is authorized and directed to call for bids, upon adequate advertisement, for the exploration, exploitation, and development, as independent contractors, of petroleum and gas deposits in such private or public lands in the Philippines as may be determined by him, upon such terms, conditions, and specifications as may be deemed by him most advantageous to Government; to require of such bidder a bond of not less than fifty thousand pesos conditioned upon the fulfillment of the terms of the bid if accepted, to issue rules and regulations for the submission of such bids, open the same as submitted on the date specified in the advertisement, and upon the result thereof, to accept or reject any or all such bids within a period of not less than ninety days from the date of the publication of the last printed advertisement; and after an award of the contract or contracts has been made, to enter into and execute such agreement or agreements as may be necessary with such successful bidder or bidders: Provided, That such bids shall be open only to such individuals and corporations as are qualified under the Constitution or the ordinance appended thereto to enter with the Government into the agreement herein contemplated: Provided, further, That any such agreement shall be submitted at the next regular session of the National Assembly for ratification and approval, and the same shall not become effective until it shall have been ratified and approved by an Act of the National Assembly: And provided, finally, That the National Assembly may approve in whole or in part such agreement. If the Act of the National Assembly ratifying said agreement should require modifications, the said agreement shall become effective upon acceptance of said modifications by the other contracting party.

It must be stressed that rights actually acquired under the enabling provisions of the foregoing legislation of the Commonwealth of the Philippines, are additional and supplemental to all the alien interests

²⁴ Pasture Land Act, June 8, 1939.

²⁵ "An Act Granting the President Authority to Aid in the Establishment and Operation of a Petroleum and Natural Gas Industry," August 22, 1938.

existing at the time of the inauguration of the Commonwealth on July 4, 1936, which were declared and recognized to be vested rights under the saving clause of Article Twelve, Section 1, of the Constitution of 1935, as above quoted.

The institutionalization of such supplemental or additional alien interests acquired during the Commonwealth period, as vested rights under the 1935 Constitution, was effected by the mandatory directive contained in Article XVI, Section 1, of said Constitution dealing with the special provisions effective upon the proclamation of the independence of the Philippines, which declared: "that all existing property rights of citizens and corporations of the United States shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens of the Philippines."

The term "existing" has reference to rights *in esse* on or before July 4, 1946.

VI. ALIEN INTERESTS DURING THE REPUBLIC

A. Continued Alien Penetration

Under the terms of the original Constitution of 1935, the parity rights mandated for U.S. citizens and corporations during the Commonwealth period would have terminated and would have ceased to exist upon the date of proclamation of the independence of the Philippines.

In the actual turn of events and developments, access to, acquisition of, and benefit from, lands and other natural resources in the public domain of the Philippines, by aliens and their companies, persisted or continued beyond and after the date of the proclamation of the independence of the Philippines.

Two distinct phases may be noted of such continued alien penetration:

1. Continuance of parity rights during the Republic under the Parity Amendment to the 1935 Constitution, from the date of independence to July 4, 1974.

2. Expansion of such alien inroads under the 1973 Constitution.

B. Alien Interests Under the Parity Amendment

On the very day of the proclamation of the independence of the Philippines, which was on July 4, 1946, the Philippine government, in a treaty on trade and related matters executed with the United States of America, undertook the legal commitment and obligation to amend its Constitution,

so as to provide for continuing parity rights of U.S. citizens and corporations in the Philippines.²⁶

The irresistible propulsive force that persuaded the government of the Republic of the Philippines, after its independence was proclaimed, to enact the Parity Amendment to the Philippine Constitution is provided by the following incentives set forth in the Philippine Rehabilitation Act of 1946.

SEC. 601. No payments under title I of this Act in excess of \$500 shall be made until an executive agreement shall have been entered into between the President of the United States and the President of the Philippines, and such agreement shall have become effective according to its terms, providing for trade relations between the United States and the Philippines, and which agreement shall also provide for the same offenses, and penalties upon conviction, thereof, as are set forth in section 107 and section 108 of title I of this Act.

Under the foregoing provision, it is mandated in said Act:

1. That war damage payments will be made in any event, but that the amounts payable for each claim will not exceed \$500, if the Parity Amendment as set forth in the U.S.-Philippines Trade Relations Act of 1946 (better known as the Bell Trade Act) is not adopted and incorporated in the Philippine Constitution.

2. That in case such Parity Amendment is duly adopted and incorporated into the Philippine Constitution, the restriction as above stated on the amount of war damage payments will not apply.

To ensure compliance by the Philippine Government with the stipulated obligations²⁸ the Philippine Trade Act of 1946 (known as the Bell Trade Act) expressly required that the Congress of the Philippines must first adopt said Act as a law of the Philippines, and then proceed to the enactment of the Parity Amendment. If these are not done, then the Philippine Trade Act of 1946 will cease to be operative or effective.

ARTICLE X

1. The Philippine Trade Act of 1946 of the United States having authorized the President of the United States to enter into this Agreement,

²⁶ "Agreement Between the United States of America and the Republic of the Philippines concerning Trade and Related Matters During Transitional Period following the Institution of the Philippine Independence," July 4, 1946, 43 O.G. 14 (Jan., 1947), I-2 D.F.A.T.S. 93, 43 U.N.T.S. 135, 1 P.T.S. 195 (1947). There were other treaties signed on the same day:

(1) Treaty of General Relations Between the Republic of the Philippines and the United States, 43 O.G. 2355 (Oct., 1946), I-1 D.F.A.T.S. 5, 7 U.N.T.S. 3, 1 P.T.S. 217 (1946).
(2) Provisional Agreement Between the United States of America and the Republic of the Philippines Concerning Friendly Relations and Diplomatic and Consular Representation, I-3 D.F.A.T.S. 64, 6 U.N.T.S. 335, 1 P.T.S. 193 (1946).

²⁸ 60 Stat. 141.

and the Congress of the United States having enacted such legislation as may be necessary to make the provisions thereof placing obligations on the United States take effect as laws of the United States, this agreement shall not take effect unless and until the Congress of the Philippines accepts it by law and has enacted such legislation as may be necessary to make all provisions hereof placing obligations on the Philippines take effect as laws of the Philippines, except as is otherwise provided in Paragraph I of Article VII. This Agreement shall then be proclaimed by the President of the United States and by the President of the Philippines, and shall enter into force on the day following the date of such proclamations, or, if they are issued on different dates, on the day following the later in date.

2. This Agreement shall have no effect after July 3, 1974. It may be terminated by either the United States or the Philippines at any time, upon not less than five years written notice. If the President of the United States or the President of the Philippines determines and proclaims that the other country has adopted or applied measures or practices which would operate to nullify or impair any right or obligation provided for in this Agreement, then the Agreement may be terminated upon not less than six months written notice.

3. If the President of the United States determines that a reasonable time for the making of the amendment to the Constitution of the Philippines referred to in Paragraph 2 of Article VII has elapsed, but that such amendment has not been made, he shall so proclaim and this Agreement shall have no effect after the date of such proclamation.

Safeguards were also taken against discrimination against U.S. citizens and corporations in the application of the Parity Amendment and other laws.

4. If the President of the United States determines and proclaims, after consultation with the President of the Philippines, that the Philippines or any of its political subdivisions or the Philippine Government is in any manner discriminating against citizens of the United States or any form of United States business enterprise, then the President of the United States shall have the right to suspend the effectiveness of the whole or any portion of this Agreement. If the President of the United States subsequently determines and proclaims, after consultation with the President of the Philippines, that the discrimination which was the basis for such suspension (a) has ceased, such suspension shall end; or (b) has not ceased after the lapse of a time determined by the President of the United States to be reasonable, then the President of the United States shall have the right to terminate this Agreement upon not less than six months written notice.

What exactly was the commitment of the Philippines in regard to Parity?

In the Trade Agreement between the United States and the Republic of the Philippines, signed on July 4, 1946,²⁹ and later proclaimed by President Manuel Roxas on January 1, 1947, it is provided in Article VII thereof:

²⁹ 61 Stat. 2611 (1947).

ARTICLE VII

1. The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by United States citizens, except that (for the period prior to the amendment of the Constitution of the Philippines referred to in paragraph 2 of this Article) the Philippines shall not be required to comply with such part of the foregoing provisions of this sentence as are in conflict with such Constitution.

2. The Government of the Philippines will promptly take such steps as are necessary to secure the amendment of the Constitution of the Philippines so as to permit the taking effect as laws of the Philippines of such part of the provisions of Paragraph 1 of this Article as is in conflict with such Constitution before such amendment.

Said Trade Agreement of 1946 was accepted before its formal execution by the Congress of the Philippines through Commonwealth Act No. 733, approved on July 3, 1946, the day before the proclamation of the independence of the Philippines.³⁰ In said Commonwealth Act, the Congress likewise enacted pertinent provisions of the Philippine Trade Act of 1946, which was Public Law 471 of the 79th Congress of the United States, including Section 341 thereof which states:

SEC. 341. Rights of United States and Business Enterprises in Natural Resources.

The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by United States citizens.

Responsive to such treaty obligations, the Congress of the Philippines on September 18, 1946 adopted a resolution proposing an amendment to the Constitution to be appended as an ordinance thereto, granting parity rights to U.S. citizens and corporations. The two houses voted separately. In the 24-member Senate, 16 senators voted in favor and 5 voted against said resolution. In the 96-member House of Representatives, 68 congress-

³⁰ Com. Act. No. 733, 60 Stat. 141. "An Act to Accept the Executive Agreement to be Entered into Between the President of the Philippines and the President of the United States Pursuant to Title IV of Public Law 371-79th Congress approved on April 30, 1946 Entitled 'An Act to Provide for the Trade Relations Between the United States and the Philippines and for Other Purposes, and to Authorize the President of the Philippines to Implement the Penal Clauses of Said Agreement in Order to Carry Out Title I of the Philippine Rehabilitation Act of 1946'"

men voted in favor of the resolution. In *Mabanag v. Lopez Vito*,³¹ the resolution was challenged as invalid and unconstitutional on the ground that such voting did not meet the required favorable vote of three-fourths of the membership of each House voting separately but the challenge was dismissed by the High Court. In the plebiscite of March 17, 1947, the amendment was approved.

The Parity Amendment to the 1935 Constitution states:

Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

In *Republic v. Quasha*,³² promulgated August 17, 1972, or a little more than a month before the proclamation of martial law on September 21, 1972, the Supreme Court dealt with two major questions:

- (1) May Americans under the Parity Agreement acquire private agricultural lands?
- (2) When will acquisitions validly made under the Parity Amendment terminate or expire?

On the first question, the High Court through the venerable Justice J.B.L. Reyes declared itself against extending the Parity Amendment to acquisitions by Americans of private agricultural lands:

It is then indubitable that the right of United States citizens and corporations to acquire and exploit private or public lands and other natural resources of the Philippines was intended to expire when the Commonwealth ended on 4 July 1946. Thereafter, public and private agricultural lands and natural resources of the Philippines were or became exclusively reserved by our Constitution for Filipino citizens. This situation lasted until the "Parity Amendment," ratified in November, 1946, once more reopened to United States citizens and business enterprises owned or controlled by them the lands of the *public domain*, the natural resources of the Philip-

³¹ 78 Phil. 1 (1947).

³² G.R. No. 30299, August 17, 1972, 46 SCRA 160 (1972).

pines, and the operation of the public utilities, exclusively, but not the acquisition or exploitation of *private* agricultural lands, about which not a word is found in the Parity Amendment.

Respondent Quasha's pretenses can find no support in Article VI of the Trade Agreement of 1955, known popularly as the Laurel-Langley Agreement,³³ establishing a sort of reciprocity rights between citizens of the Philippines and those of the United States, couched in the following terms:

ARTICLE VII

"2. The rights provided for in Paragraph 1 may be exercised, in the case of citizens of the Philippines with respect to natural resources in the United States, which are subject to Federal control or regulations, only through the medium of a corporation organized under the laws of the United States or one of the States hereof and likewise, in the case of citizens of the United States with respect to natural resources in the *public domain* in the Philippines only through the medium of a corporation organized under the laws of the Philippines and at least 60% of the capital stock of which is owned or controlled by citizens of the United States. This provision, however, *does not affect the right* of citizens of the United States to acquire or own private agricultural lands in the Philippines or citizens of the Philippines to acquire or own land in the United States which is subject to the jurisdiction of the United States and not within the jurisdiction of any state and which is not within the public domain. The Philippines reserves the right to dispose of the public lands in small quantities on especially favorable terms exclusively to actual settlers or other users who are its own citizens. The United States reserves the right to dispose of its public lands in small quantities on especially favorable terms exclusively to actual settlers or other users who are its own citizens or aliens who have declared their intention to become citizens. Each party reserves the right to limit the extent to which aliens may engage in fishing, or engage in enterprises which furnish communications services and air or water transport. The United States also reserves the right to limit the extent to which aliens may own land in its outlying territories and possessions, but the Philippines will extend to American nationals who are residents of any of those outlying territories and possessions only the same rights, with respect to ownership of lands, which are granted therein to citizens of the Philippines. The rights provided for in this paragraph shall not, however, be exercised by either party so as to derogate from the rights previously acquired by citizens or corporations or associations owned or controlled by citizens of the other part."

The words used in Article VI to the effect that—

"....."

This provision does not affect the *right of citizens of the United States to acquire or own private agricultural lands in the Philippines*, or citizens of the Philippines to acquire or own land in the United States which is subject to the jurisdiction of the United States", must be understood as referring to rights of United States citizens to acquire or own private agricultural lands before the independence of the

³³ II-4 D.F.A.T.S. 48, 238 U.N.T.S. 264, 3 P.T.S. 461 (1956).

Philippines since the obvious purpose of the article was to establish rights of the United States and Filipino citizens on a basis of reciprocity. For as already shown, no such right to acquire or own private agricultural lands in the Philippines has existed since the independent Republic was established in 1946. The quoted expressions of the Laurel-Langley Agreement could not expand the rights of United States citizens as to public agricultural lands of the Philippines to private lands, when the Parity Amendment and the Constitution authorize such United States citizens and business entities only to acquire and exploit *agricultural lands of the public domain*. If the reopening of only public lands to Americans required a Constitutional Amendment, how could a mere Trade Agreement, like the Laurel-Langley, by itself enable United States citizens to acquire and exploit private agricultural lands, a right that ceased to exist since the independence of the Philippines by express prescription of our Constitution?

On the question of term or duration of the rights acquired under the Parity Amendment, the High Court held such rights to be co-terminous with the period of effectivity of the Parity Amendment:

We turn to the second issue involved in this appeal: On the assumption that respondent Quasha's purchase of the private agricultural land involved, is valid and constitutional, will or will not his rights expire on 3 July 1974?

For the solution of this problem, We again turn to the "Parity Amendment." Under it,

"Notwithstanding the provision of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, *during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four*, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coals, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines." (Emphasis supplied)

It is easy to see that all exceptional rights conferred upon United States citizens and business entities owned or controlled by them, under the Amendment, are subject to one and the same resolutive term or period: they are to last "during the effectivity of the Executive Agreement entered into on 4 July 1946," "*but in no case to extend beyond the third of July, 1974.*" None of the privileges conferred by the "Parity Amendment" are excepted from this resolutive period.

This limitation of time is in conformity with Article X, Section 2, of the Philippine Trade Act of 1946, as embodied in Commonwealth Act No. 733. It says:

"ARTICLE X

2. *This Agreement shall have no effect after 3 July 1974. It may be terminated by either the United States or the Philippines at any time, upon not less than five years' written notice. If the President of the United States or the President of the Philippines determines and proclaims that the other country has adopted or applied measures or practices which would operate to nullify or impair any right or obligation provided for in this Agreement, then the Agreement may be terminated upon not less than six months' written notice.'*"

Respondent Quasha argues that the limitative period set in the "Parity Amendment" should be understood not to be applicable to the disposition, or correlative acquisition, of alienable agricultural lands of the public domain, since such lands can be acquired in full ownership, in which event, under Article 428 of the Civil Code of Philippines—

"ART. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

"The owner has also a right of action against the holder and possessor of the thing in order to recover it."

and that "since any period or condition which produces the effect of loss or deprivation of valuable rights is in derogation of due process of law," there must be "a law which expressly and indubitably limits and extinguishes the ownership of non-citizens over private agricultural lands situated in the Philippines validly acquired under the law existing at the time of acquisition."

Strangely enough, this argument ignores the provisions of the "Parity Amendment" prescribing that the disposition and exploitation, etc. of agricultural lands of the public domain *are in no case* to extend beyond the third of July 1974. This limitation already existed when Quasha in 1954 purchased the Forbes Park property, and the acquisition was subject to it. If the Philippine government can not dispose of its alienable public agricultural lands beyond that date under the "Parity Amendment," then, logically, the Constitution, as modified by the Amendment, only authorizes either of two things: (a) alienation or transfer of rights less than ownership or (b) a resolvable ownership that will be extinguished not later than the specified period. For the Philippine government to dispose of the public agricultural land for an indefinite time would necessarily be in violation of the Constitution. There is nothing in the Civil Law of this country that is repugnant to the existence of ownership for a limited duration; thus the title of a "*reservista*" (ascendant inheriting from a descendant) in *reserva troncal*, under Article 891 of the Civil Code of the Philippines, is one such owner, holding title and dominion, although under condition subsequent; he can do anything that a genuine owner can do, until his death supervenes with "reservataries" surviving, i.e., relatives within the third degree (*Edroso vs. Sablan*, 25 Phil. 295; *Lusod vs. Ortega*, 46 Phil. 661, 695). In truth, respondent himself invokes Article 428 of the Civil Code to the effect that "the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law." One such limitation is the period fixed in the "Parity Amendment," which forms part of the Constitution, the highest law of the land. How then can he complain of deprivation of due process?³⁴

³⁴ *Quasha*, 46 SCRA at 173-77.

In the Constitution of 1973, which came into force and effect less than four months from the promulgation date of the *Quasha* decision, parity rights are dealt with by a specific provision of the Transitory Article, as follows:

SEC. 11. The rights and privileges granted to citizens of the United States or to corporations or associations owned or controlled by such citizens under the Ordinance appended to the nineteen hundred and thirty-five Constitution shall automatically terminate on the third day of July, nineteen hundred and seventy-four. Titles to private lands acquired by such persons before such date shall be valid as against other private persons only.

It is clear from such provision that notwithstanding the termination of parity rights on July 4, 1974, as declared in the *Quasha* decision, alien grantees may continue in their possession and enjoyment of acquired properties until the State sees fit to recover said properties.

C. Expanded Access and Enjoyment by Aliens under the 1973 Constitution.

Under the 1973 Constitution, two devices were adopted, which could expand greatly the access to and enjoyment of Philippine natural resources by aliens and their companies. One such device is the service or management contracts which may by law be permitted for the development of natural resources by any foreign person or entity. This is authorized in Section 9 of Article XIV, which states:

SEC. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or association at least sixty *per centum* of the capital of which is owned by such citizens. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such.

The second device is a broad exemption from the nationality requirements, of acquisition, development, possession, enjoyment and exploitation of natural resources by foreign entities or organizations under treaties or international agreements executed by the Chief Executive in the national welfare and interest. As stated in Article XIV: "SEC. 16. Any provision of paragraph one, Section Fourteen, Article Eight and of this Article notwithstanding, the President may enter into international treaties or agreements as the national welfare and interest may require."

Highly significant exceptions are provided here. First, the international treaties and agreements authorized are valid without the concurrence of the National Assembly, including the regular Assembly. Second, with respect to dispositions of lands and other natural resources of the public domain, the nationality requirements as well as other restrictions may not be operative. Third, the nationality requirements in regard to private agricultural land may likewise be dispensed.

The far-ranging implications of the exceptional and discretionary powers reposed in the President concerning the national patrimony are better illuminated, when the foregoing exceptions are taken in relation to the provisions of Article XIV of the Philippine Constitution as amended up to 1984.

ARTICLE XIV
THE NATIONAL ECONOMY AND THE PATRIMONY
OF THE NATION

SEC. 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State.

SEC. 9. The disposition, exploration, development, exploitation, or With the exception of agricultural, industrial or commercial, residential and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power in which cases, beneficial use may be the measure and the limit of the grant.

SEC. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such.

SEC. 10. Lands of the public domain are classified into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and such other classes as may be provided by law.

SEC. 11. The Batasang Pambansa, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation, or association, and the conditions therefor. No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area; nor may

any citizen hold such lands by lease in excess of five hundred hectares or acquire by purchase or homestead in excess of twenty-four hectares. No private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares; however, such area may be increased by the Batasang Pambansa upon recommendation of the National Economic and Development Authority.

SEC. 12. The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.

Such program may include the grant or distribution of alienable or disposable lands of the public domain to qualified tenants, farmers and other landless citizens in areas where the President may by or pursuant to law reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding section.

The State shall moreover undertake an urban land reform and social housing program to provide deserving landless, homeless or inadequately sheltered low income resident citizens reasonable opportunity to acquire land and decent housing consistent with Section 2 of Article IV of the Constitution.³⁵

SEC. 13. The Batasang Pambansa may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

SEC. 14. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

SEC. 15. Notwithstanding the provisions of Section 14 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private land, for use by him as his residence, as the Batasang Pambansa shall provide.

SEC. 16. Any provision of paragraph one, Section fourteen, Article Eight and of this Article notwithstanding, the President may enter into international treaties or agreements as the national welfare and interest may require.

CONCLUDING OBSERVATIONS

Under the Constitution of the Philippines (1935 as well as 1973), one of the broad objectives postulated for the Government is "to conserve and develop the patrimony of the Nation" which is set forth in the Preamble.

From the foregoing exposition, however, the National Patrimony (in the sense of public domain) has been steadily dwindling, and may reach the vanishing point before the century ends. Stress must be given the fact that, to begin with, the National Patrimony had been greatly reduced by the beginning of this century. Much of the best lands had been taken over by the Church and its religious orders, and vast tracts had been deeded by the Spanish monarchs under royal grants. All these became vested rights under the Treaty of Paris, and the episode of the

³⁵ As amended by the January 27, 1984 Plebiscite.

Friar Lands only underscore the problem of getting back choice lands once they get into alien hands.

During the long period of Spanish rule, the lands taken by the colonizers were arable and residential lands. During the much shorter period of American colonial rule, the choice of the colonizers shifted to mineral and timber lands. Some of the richest deposits of valuable ore were taken over by Americans and their companies, and most of what was taken have remained in their hands. Such alien acquisitions continued during the Commonwealth period, and also during most of the life of the Republic up to this time, by force of the Parity Amendment.

Under the present Constitution, the alienation of the remaining National Patrimony has taken other forms. Large tracts have been given away under management or service contracts with the Government, and even larger areas could be placed under alien hands through international agreements. The situation is aggravated by alien take-over of private land-holdings under management contracts, and to a lesser degree, under increasing resort to growers' agreements.

There is bitter irony in the situation that has emerged, that the sovereign power of the Filipino people expressed through their fundamental law, is used to maintain alien control and enjoyment of the lands taken from the Nation.