

THE PHILIPPINE CONSTITUTION OF 1935 REVISITED

— *An Enquiry into the Question of Philippine Sovereignty in the Light of U.S. Federal Legislation Governing U.S.-Philippine Relations, at the Time Independence was Proclaimed and Thereafter.**

PERFECTO V. FERNANDEZ**

I. DISABLED SOVEREIGNTY

The thesis presented in the lecture may be simply stated. From a juristic viewpoint, the overriding norms of U.S. federal law governing U.S.-Philippine Relations has so curtailed and disabled Philippine sovereignty at the time of proclamation of independence and thereafter, so as to create a status of continuing political tutelage.

The thesis may be stated in another way. The Republic of the Philippines was the creation of its fundamental law, the Constitution of 1935, but said Constitution was so impregnated with overriding norms of U.S. federal law as to be more expressive of continuing American sovereignty than of Philippine independence. In blunt language, because of the paramount constraints imposed by U.S. federal law, Philippine sovereignty was impaired and enfeebled in the very instrument of its expression, which was the 1935 Constitution.

To begin with, the Constitution of 1935 was a composite instrument, both in terms of its content, as well as in the process of enactment. In both aspects, American participation was crucial and decisive, while the Philippine contribution was at best collaborative. In terms of content, the superstructure of the Philippine Ship of State was laid down by American hands; the Filipinos merely undertook the task of completion. In terms of the enactment process, Philippine participation, although elaborate, was intermediate; it was the President of the United States with his approving signature who had the final say.¹

In the fixing of the norms in our fundamental law, which was to govern the Philippines before, and after, independence was proclaimed, the overriding mandates of U.S. federal law, made on American initiative and with the customary forthrightness of Americans, were predominant and decisive.

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** Professor of Law, University of the Philippines.

¹ U.S. Philippine Commonwealth and Independence Law (Tydings-McDuffie Act), 48 Stat. 456 (1934), sec. 3.

There is no need for any profound scholarship here, because the mandates are there for all the world to see. They are set forth in black and white, first in the 1933 Hare-Wawes Cutting Law,² and then in the Tydings McDuffie Law of 1934.³

The U.S. federal law impregnated into our Constitution had two distinct parts. The first provided, as it was, the bill of particulars as to what our Constitution should contain.⁴ These were general directives or standards that gave the over-all architectural design of, and provided the general shape and contour to, the Philippine Ship of State. The other part provided a framework of prohibitions and restraints on the Philippine Government at the time independence was proclaimed and henceforth.⁵ These constraining federal norms were imbedded in our Constitution, and then, at the time of the proclamation of our independence, or soon thereafter, were transplanted into pre-arranged treaties,⁶ with liberal additions of restrictions and impositions under subsequent federal laws.⁷

In my discussion below, I shall focus on the norms of federal legislation that curtailed, enfeebled, and virtually suppressed Philippine sovereignty. I shall discuss them in terms of their adverse impact, first, on our political sovereignty, and second, on our economic sovereignty. These aspects are of course intertwined, but analysis is facilitated by discussing them separately.

II. CRITERION OF POLITICAL SOVEREIGNTY

I begin by discussing how Philippine political sovereignty was curtailed, enfeebled and disabled, for this is crucial to sovereignty in its other aspects.

² U.S. Philippine Independence Act (Hare-Hawes-Cutting Act), 47 Stat. 716 (1933).

³ U.S. Philippine Commonwealth and Independence Law (Tydings-McDuffie Act), 48 Stat. 456 (1934).

⁴ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 2.

⁵ U.S. Amendments to the Tydings-McDuffie Act, 53 Stat. 1226 (1939), secs. 1 and 3.

⁶ Agreement on Trade with the U.S., July 4, 1946, I PTS 195 (1968); Treaty on General Relations with the U.S., July 4, 1946, I PTS 217 (1968); Transfer of Enemy Property Agreement with the U.S., August 22, 1946, I PTS 255 (1968); Agreement on Surplus War Property with the U.S., September 11, 1946, I PTS 263 (1968); Military Bases Agreement with the U.S., February 14, 1947, I PTS 357 (1968); Military Assistance Agreement with the U.S., March 21, 1947, I PTS 387 (1968); Agreement with the U.S. on the Transfer of Corregidor Is. (Fort Mills) and Petit Barracks, October 12, 1947, I PTS 519 (1968); Agreement with the U.S. on the Transfer of the Mariveles Quarantine Reservation, December 18-19, 1947, I PTS 639 (1968); Agreement with the U.S. on the Transfer of Fort McKinley Military Reservation (Nichols Field), December 23-24, 1947, I PTS 645 (1968); Agreement with the U.S. on the Use of Funds from the Sale of Surplus War Property, March 23, 1948, I PTS 689 (1968).

⁷ U.S. Surplus Property Act, 58 Stat. 765 (1944); U.S. Philippine Trade Act, 60 Stat. 141 (1946); U.S. Philippine Rehabilitation Act, 60 Stat. 128 (1946); U.S. Republic of the Philippines Military Assistance Act, 60 Stat. 315 (1946); U.S. Philippine Property Act, 60 Stat. 418 (1946); U.S. Philippine Rehabilitation Act as Amended, 60 Stat. 804 (1946), 62 Stat. 4 (1948), 62 Stat. 1224 (1948), 63 Stat. 692 (1949); Veterans Benefits Law of 1958, Pub. L. No. 85-857, 72 Stat. 1105 (1958).

In juristic terms, political sovereignty is simply the supremacy of the law of the State within its territory. The basis or foundation of such supremacy is physical control of people and territory emanating from physical power. Otherwise stated, there is political sovereignty, where the State by its law, determines who has the right to the use of force, and has the uncontested physical power within its territory to enforce such law. Such total or substantial monopoly of force exists if its armed forces and its police have unrestricted and uncontested control of the State territory. There are of course recognized limitations, but the defining element must be ever present, which is that within the State territory there must be no other or separate force in being superior to that under its control. Were the situation otherwise, as where the force of the State is subordinate in strength to an external and alien force within its borders, the defining element of supremacy is lost, and political sovereignty may be illusory, notwithstanding external trappings.

The defining criterion of the State as the social order expressed in law founded on physical force is well recognized in political thought as well as jurisprudence.

Summarizing the dominant ideas on Sovereignty over the past hundred years, James Bryce in his *Studies in History and Jurisprudence*, points out the ineludible basis or foundation of Sovereignty in physical power. He states first the idea of Sovereign Power, and then its relationship to the idea of Legal Sovereignty, thus:

The expression is perhaps most frequent in the phrase 'Sovereign Power' which carries with it the idea of its being, whether legal or not, at any rate irresistible. We may define this dominant force, whom we may call the Practical Sovereign, as the person (or body of persons) who can make his (or their) will prevail whether with the law or against the law. He (or they) is the *de facto* ruler, the person to whom obedience is actually paid.

* * *

The Sovereign *de iure* may also be the sovereign *de facto*. He ought to be so; that is to say, the plan of a well regulated State requires that Legal Right and Actual Power should be united in the same person or body. Right ought to have on his side, available for its enforcement, physical force and the habit of obedience. Where Sovereignty *de facto* is disjoined from Sovereignty *de iure*, there will not necessarily be a collision, because the former power may act through the latter. But there is always a danger that the laws will be overridden by the Practical Sovereign and disobeyed by the citizen.⁸

D. J. Rees has likewise summarized the thinking of many political philosophers, in his work on *The Theory of Sovereignty Restated*:

For another group of philosophers the word has meant a supreme coercive power exercised by a determinate body of persons possessing a monopoly of certain instruments of coercion. They have not usually

⁸ I BRYCE, *STUDIES IN HISTORY AND JURISPRUDENCE* 512, 515-516 (1901).

defined what they mean by coercive power, nor clearly stated how it is to be distinguished from legal authority or political influence. But it has been generally understood that power in this sense is to be distinguished from legal authority at least in one respect, namely, that its exercise may sometimes be extra-legal. In this sense, the sovereign is a determinate body of persons capable of enforcing decisions against any likely opposition; no matter who makes, or otherwise carries out, those decisions. Usually such a body consists of a professional police or a standing army; usually too, the decisions which it enforces are those of Parliaments, Ministries and Courts.⁹

The essence of the State as monopoly of force underlying law, was developed by Prof. Hans Kelsen in his *Pure Theory of Law*, which he elaborated in his work on *General Theory of Law and State*.

In *General Theory*, he states:

The State as "Politically" Organized Society (The State as Power).

The identity of State and legal order is apparent from the fact that even sociologists characterize the State as a "politically" organized society. Since society — as a unit — is constituted by organization, it is more correct to define the State as "political organization." An organization is an order. But in what does the "political" character of this order lie? In the fact that it is a coercive order. The State is a political organization because it is an order regulating the use of force, because it monopolizes the use of force. This, however, as we have seen, is one of the essential characters of law. The State is a politically organized society because it is a community constituted by a coercive order, and this coercive order is the law.¹⁰

In *Pure Theory*, he states:

Gradually, however, the principle is recognized that every use of physical force is prohibited unless — and this is a limitation of the principle — it is especially authorized as a reaction against a socially detrimental fact attributable to the legal community. In this case, the legal order determines exhaustively the conditions under which (and the men by whom) physical force may be used. Since the individual authorized to use force may be regarded as an organ of the legal order (or of the community constituted by the legal order), the execution of coercive acts by these individuals may be attributed to the community. Then we are confronted with a monopoly of force of the legal community.¹¹

Similar ideas are developed by J. Austin in his *Province of Jurisprudence Determined*,¹² by J. Bodin in his seminal work,¹³ and by the Social Contract philosophers Thomas Hobbes,¹⁴ Jean J. Rousseau¹⁵ and John Locke.¹⁶

⁹ LASLETT (ed.), *PHILOSOPHY, POLITICS, AND SOCIETY* (1959).

¹⁰ KELSEN, *PURE THEORY OF LAW* 36 (1960).

¹¹ KELSEN, *GENERAL THEORY OF LAW AND STATE* 189-90 (1945).

¹² See BODIN, *SIX BOOKS OF THE COMMONWEALTH* (1576).

¹³ See BODIN, *SIX BOOKS OF THE COMMONWEALTH* (1576).

¹⁴ See HOBBS, *LEVIATHAN* (1651).

¹⁵ See ROUSSEAU, *THE SOCIAL CONTRACT* (1762).

¹⁶ See LOCKE, *TWO TREATISES OF GOVERNMENT* (1680).

III. OBSTACLES TO PHILIPPINE SOVEREIGNTY

In the light of the above juristic criterion, it is an arguable case that the Republic of the Philippines under the 1935 Constitution did not enjoy political sovereignty at the time of the proclamation of its independence. There were two paramount and overriding obstacles to such political sovereignty. First is that on, before, and after 4 July 1946, the U.S. armed forces stationed within Philippine territory (land, sea and air) did have, and continue to have, such overwhelming strength *vis-a-vis* the Philippine armed forces as to have effective physical dominance within Philippine territory, not over the whole territory at any one time, but over any portion where they choose to operate. The second obstacle to political sovereignty is that because of the confluence of pressures and dependencies, arising from federal law and treaties emanating therefrom, the Philippine armed forces had come under such massive influence by the U.S. government and its agencies as to be under its effective control. In July 1946, the officer corps of the Philippine armed forces, including the non-commissioned officers, had just been mustered out of the United States Army, of which they were part for five years, and they and their families were receiving liberal benefits under U.S. veterans laws from the U.S. Veterans Administration.

Let me now examine the framework of federal laws that impregnated our Constitution with restraints, prohibitions and arrangements, giving rise to these obstacles to our political sovereignty.

In connection with U.S. military and naval bases in the Philippines, and the stationing of U.S. armed forces therein, the following federal laws will be discussed:

1. The Hare-Hawes-Cutting Law of 1934¹⁷
2. The Tydings-McDuffie Law of 1934¹⁸
3. The Joint Resolution of the U.S. Congress of June 29, 1944.¹⁹

Additionally, in relation to these federal laws, as their direct outcome or result, I shall also discuss the Philippine-U.S. Treaty on General Relations of July 4, 1946,²⁰ and the Philippine-U.S. Military Bases Agreement of 1947.²¹

In connection with the control of the Philippine armed forces by the U.S. Government, I shall discuss the following federal laws:

1. The Hare-Hawes-Cutting Law²²
2. The Tydings-McDuffie Law²³

¹⁷ 47 Stat. 716 (1933).

¹⁸ 48 Stat. 456 (1934).

¹⁹ S. J. Res. 93, 78th Cong., 2nd Sess., 58 Stat. 625-626 (1944).

²⁰ Treaty on General Relations with the U.S., I PTS 217 (1968).

²¹ Military Bases Agreement with the U.S., I PTS 356 (1968).

²² 47 Stat. 716 (1933).

²³ Stat. 456 (1934).

3. The Presidential Executive Order of July 26, 1941²⁴
4. The U.S. Veterans Benefits Law²⁵
5. U.S. Military Assistance Act²⁶
6. And as a direct outcome thereof, the Philippine-U.S. Military Assistance Agreement.²⁷

IV. FEDERAL LEGISLATION ON MILITARY BASES

Let me now discuss the U.S. federal law concerning the stationing of U.S. armed forces in the Philippines. In this regard, the federal law on military and other reservations in the Philippines deserves our utmost attention, first, because such bases provide, as they have provided, the physical strongholds for U.S. armed forces within Philippine territory, and second, they are built-in platforms or spring-boards from which such armed forces could sally and deploy into any portion of Philippine territory, and control it as exigencies may require.

Since the turn of the century, and for almost half a century of U.S. colonial rule in the Philippines, federal legislation has continuously provided for exclusive U.S. control over such military and naval reservations, and has always excluded such reservations from the transfers of the public domain to the different Governments of the Philippine Islands.

Under the Act of Congress of July 1, 1902,²⁸ popularly known as the Philippine Bill of 1902, the lands transferred to the Government of the Philippine Islands under section twelve of said Act excluded "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."²⁹

A similar assertion of continuing and exclusive jurisdiction of the United States over military and other reservations in the Philippines was made in the Act of Congress of August 29, 1916, better known as the Jones Law or the Philippine Autonomy Act.³⁰ From the lands that were placed under the control of the Government of the Philippine Islands under section nine of said law, were expressly excluded "such land and

²⁴ 40 O.G. 879 (1941).

²⁵ Veterans' Benefits Law of 1958, 72 Stat. 1105 (1958).

²⁶ U.S. Republic of the Philippines Military Assistance Act, 60 STAT. 315 (1946).

²⁷ Military Assistance Agreement with the U.S., I PTS 387 (1968).

²⁸ U.S. Philippine Bill of 1902, 32 Stat. 691 (1902).

²⁹ The entire text of Sec. 12 reads:

Sec. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of said Islands to be administered for the benefit of the inhabitants thereof, 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 said islands to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

³⁰ U.S. Organic Act of the Philippine Islands (Jones Law), 39 Stat. 545 (1916).

other property as may have been or shall be designated by the President of the United States for military and other reservations of the government of the United States."³¹

In the first Philippine Independence Act, popularly known as the Hare-Hawes-Cutting Law,³² a similar provision for continuing American control over military and naval reservations was expressly included. Under section five of said law, which transferred lands to the Commonwealth of the Philippines, expressly excluded from such grant were "such land and 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."³³

The very same provision, with its express exclusion, was reproduced in section five of the Tydings-McDuffie Act of 1934.³⁴

³¹ The full Section reads:

SEC. 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 and two, except such as may have heretofore been sold and disposed of for the benefit of 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 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 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.

³² 47 Stat. 716 (1933).

³³ Section 5 states:

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.

³⁴ This section provides:

Sec. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned

I have taken pains to give the precise references in the U.S. military reservations from 1902 to 1934, with some risk of tedium, because of the deep and abiding interest of the U.S. federal government in their exclusive control, amounting to almost an obsession, and thereby provide a background for the contrasting and differing or varying provisions in federal law concerning continued U.S. control of such reservations after the proclamation of Philippine independence.

Care and attention must be given to the erratic and conflicting wording of federal statutes and other legal documents,³⁵ concerning the retention and control of U.S. military and naval reservations in the Philippines, after proclamation of independence, for these may provide for expansive and continuing claims for retention rights over Philippine territory.

Under the Hare-Hawes-Cutting Law, or the first Philippine Independence Act, the retention rights after independence were explicit; first, that such American rights comprehended or embraced both military and naval bases, and second, that these were rights of ownership, hence, indefinite and without limitation as to time. Under section one of said law, the surrender of sovereignty by the United States upon proclamation of Philippine independence, over the territory and people of the Philippines, including all military and other reservations of the Government of the United States, was made subject to an important and express exception: "except such land or property reserved under section 5 as may be redesignated by the President of the United States not later than two years after the date of such proclamation."³⁶

It was clear that the Hare-Hawes-Cutting Law provided for the retention of permanent military and naval bases, without limitation as to

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.

³⁵ Compare, for e.g., sec. 10 of the Hare-Hawes-Cutting Law, sec. 10 of the Tydings-McDuffie Law, and the Joint Resolution of the U.S. Congress dated June 29, 1944.

³⁶ The relevant portion reads:

SEC. 10. On the fourth day of July, immediately following the expiration of a period of ten years from the date of the inauguration of the government under the constitution provided for in this Act, the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such land or property reserved under section 5 as may be designated by the President of the United States not later than two years after the date of such proclamation), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the

time, and this was among the key reasons for the vigorous opposition of the Filipino leadership to the law. Because of such opposition, the second Philippine Independence Act, known as Tydings-McDuffie Law was enacted to replace the Hare-Hawes-Cutting Law, and this later Act modified the retention rights respecting the military and naval reservations in two significant aspects. First, the retention rights were confined to naval reservations and fueling stations, impliedly excluding military bases. The exception clause was re-worded to state as follows: "except such naval reservations and fueling stations as are reserved under section 5."³⁷ Second, while the express exclusion of naval reservations and fueling stations from the withdrawal of sovereignty of the United States, clearly indicated continuing ownership and control, permanently and without limitation as to time, the Act made it clear that the question of termination date was among the questions open to adjustment and settlement through negotiations between the United States and the Republic of the Philippines. This is clear from the language of section 10 of the Tydings-McDuffie Act, which states:

Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the Government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippines Islands, and pending such adjustment

same of the government instituted by the people thereof, under the constitution then in force; *provided*, that the constitution has been previously amended to include the following provisions:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and 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.

³⁷ Philippine Commonwealth and Independence Act, 48 Stat. 456, 463 (1934).

and settlement the matter of naval reservations and fueling stations shall remain in its present status.³⁸

When the Hare-Hawes-Cutting Act is compared with the later Tydings McDuffie Act on the precise provision on retention rights over military and naval reservations, it is clear that there was radical transformation of the American position in the direction of (1) waiving retention rights to military bases, (2) restricting retention purely to naval bases and fueling stations for naval vessels, and (3) adjustment of the period for holding such naval bases and fueling stations.

During the Pacific War, however, the U.S. Congress apparently had a change of mind, and by Joint Resolution of June 29, 1944 (two years before the proclamation of Philippine independence), the President of the United States was authorized, after negotiation with the president of the Commonwealth or of the Republic,

. . . to withhold, or to acquire and to retain such bases, necessary appurtenances to such bases, and the rights incident thereto, in addition to any provided for by the Act of March 24, 1934, as he may deem necessary for the mutual protection of the Philippine Islands and of the United States.³⁹

³⁸ *Ibid.*

³⁹ S. J. Res. 93, 58 Stat. 625, 626 (1944).

JOINT RESOLUTION

Declaring the policy of the Congress with respect to the independence of the Philippine Islands, and for other purposes.

Whereas, on December 7, 1941, while the people of the Philippine Islands were peacefully engaged in achieving for themselves their complete political independence in the manner mutually agreed upon by the Government of the United States and the people of the Philippine Islands, which independence was to become fully effective July 4, 1946, the Japanese in a wholly unprovoked, wantonly treacherous, and surprise attack on the people of the Philippines and of the United States, did by military invasion interrupt these orderly and mutually agreeable processes for complete independence of the Philippines; and

Whereas the American and Filipino troops made a valiant and courageous defense to the aggression of the Japanese invader and were overwhelmed only by the surprise and superior numbers and equipment of the enemy; and

Whereas the Japanese are now in possession and control of the land, peoples, business, communication, and institutions of the Commonwealth of the Philippines, and because of these circumstances the Filipino people are denied the free use and employment of the processes and political institutions jointly established by the Government of the United States and the Commonwealth of the Philippines for the transaction of private and public business and for the maintenance of liberty, law and order, and justice in the Philippine Islands; and

Whereas by this possession and invasion the Japanese have attempted to frustrate the free processes to independence in the Philippines by substituting therefor their own puppet government which was conceived in intrigue, born in coercion, and reared primarily for the purpose of Japanese selfishness and aggrandizement and not to achieve the independence and freedom of the Filipino people; and

Whereas the Government of the United States has solemnly guaranteed to the people of the Philippine Islands the right to be completely free and independent and to select by a free ballot, without any kind of inducement or coercion whatsoever, those who shall hold the elective offices in such government and exercise the power and authority thereof, which solemn guaranties have been temporarily made impossible of fulfillment due to the wantonly treacherous and surprise attack on the free people of the Philippine Islands; and

Against the virtual directive to the U.S. president to expand the retention or acquisition of U.S. bases in the Philippines, beyond that provided in the Tydings McDuffie Act, we must now evaluate the careful and precise wording of the Proclamation of Independence issued by President Harry S. Truman issued on July 4, 1946, wherein he declared that:

[I]n accord with subject to the reservations provided for in the *pertinent provisions of the existing acts of Congress*, the United States of America hereby withdraws and surrenders all rights of possession, supervision, jurisdiction, control or sovereignty now existing and exercised by the United States of America in and over the territory and people of the Philippines . . . (underscoring supplied).⁴⁰

One can only wonder what was precisely meant by the reference in the proclamation to the "reservations provided for in the pertinent provisions of the existing acts of Congress." Could the U.S. government have been laying a basis for invoking the reservations under the Philippine Bill of 1902, and under the Jones Law of 1916, in addition to the reservations under the Tydings McDuffie Act of 1934?

Whereas, because of the valiant resistance by the Philippine people, which is even now continuing while the invader occupies parts of the Philippines, and because of the long and unbroken record of loyalty of the Filipino people, both to the cause of complete independence for themselves and to the sovereignty of the United States while they have been under our flag, and because they have abundantly demonstrated their will to independence through the processes mutually agreed upon by the people of the Philippines and the Government of the United States, and their will to resist all outside invasion and encroachment, which seek to destroy or set aside their march to independence, and because they have abundantly proved their capacity to govern themselves in an enlightened, progressive, and democratic manner: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the policy of the Congress that the United States shall drive the treacherous, invading Japanese from the Philippine Islands, restore as quickly as possible the orderly and free democratic processes of government to the Filipino people, and thereupon establish the complete independence of the Philippine Islands as a separate and self-governing nation.

SEC. 2. After negotiation with the President of the Commonwealth of the Philippines, or the President of the Filipino Republic, the President of the United States is hereby authorized by such means as he finds appropriate to withhold or to acquire and to retain such bases, necessary appurtenances to such bases, and the rights incident thereto, in addition to any provided for by the Act of March 24, 1934, as he may deem necessary for the mutual protection of the Philippine Islands and of the United States.

SEC. 3. In order speedily to effectuate the policy declared in section 1, the President of the United States is hereby authorized, after proclaiming that constitutional processes and normal functions of government have been restored in the Philippine Islands and after consultation with the President of the Commonwealth of the Philippines, to advance the date of the independence of the Philippine Islands by proclaiming their independence as a separate and self-governing nation prior to July 4, 1946.

SEC. 4. Meanwhile the resources of the United States, both of men and materials, are pledged for continued use to redeem the Philippines from the invader and to speed the day of ultimate and complete independence for the people of the Philippine Islands.

Approved June 29, 1944.

⁴⁰ Proclamation by the President of the United States of America of the Independence of the Philippines, 60 Stat. 7352 (1946).

Such expanded claim of reservations must have provided room for American maneuvers to implement the directive in the Joint Resolution of Congress of June 29, 1944,⁴¹ for the U.S.-Philippine Treaty of General Relations, executed on the very day independence was proclaimed, provided the following on the crucial matter of U.S. military bases in the Philippines after independence:

The United States of America agrees to withdraw and surrender, and does hereby withdraw and surrender, all right of possession, supervision, jurisdiction, control or sovereignty existing and exercised by the United States of America in and over the territory and the people of the Philippine Islands, except the use of such bases, necessary appurtenances to such bases, and the rights incident thereto, as the United States of America, by agreement with the Republic of the Philippines and of the United States of America. The United States of America further agrees to recognize, and does hereby recognize, the independence of the Republic of the Philippines as a separate self-governing nation and to acknowledge and does hereby acknowledge, the authority and control over the same of the Government instituted by the people thereof, under the Constitution of the Republic of the Philippines.⁴²

The above provision with its reference to an "agreement" opened the way for the U.S.-Philippine Military Bases Treaty of 1947.⁴³

From the foregoing, it is clear that such Treaty sprung and emanated from the mandates of U.S. federal law.

V. EXPANDED CLAIMS TO U.S. BASES

For an adequate understanding of the magnitude of the U.S. armed forces and their facilities in the Philippines, it is necessary to point out just what had been granted under the Military Bases Agreement. In terms of territorial areas that came under American use and control, there are four discernible categories:

1. The bases in actual use by the U.S. armed forces, listed as Annex "A" to said Agreement.
2. The bases that they can use as the necessity arises, listed in Annex "B" to the Agreement.
3. Expansion of any of the listed bases.
4. Additional bases which the U.S. may request in the future, as the need arises.

Article One of the Military Bases Agreement provides:

1. The Government of the Republic of the Philippines (hereinafter referred to as the Philippines) grants to the Government of the United States of America (hereinafter referred to as the United States) the

⁴¹ S. J. Res. 93, 58 Stat. 625 (1944).

⁴² Treaty on General Relations with the U. S., July 4, 1946, I PTS 217 (1968).

⁴³ Military Bases Agreement with the U. S., March 14, 1947, I PTS 357 (1968).

right to retain the use of the bases in the Philippines listed in Annex A attached hereto.

2. The Philippines agrees to permit the United States, upon notice to the Philippines, to use such of those bases listed in Annex B as the United States determines to be required by military necessity.

3. The Philippines agrees to enter into negotiations with the United States at the latter's request to permit the United States to expand such bases, to exchange such bases for other bases, to acquire additional bases, or relinquish rights to bases, as any of such exigencies may be required by military necessity.

4. A narrative description of the boundaries of the bases to which this Agreement relates is given in Annex A and Annex B. An exact description of the bases listed in Annex A, with metes and bounds, in conformity with the narrative descriptions, will be agreed upon between the appropriate authorities of the two Governments as soon as possible. With respect to any of the bases listed in Annex B, an exact description with metes and bounds in conformity with the narrative description of such bases, will be agreed upon if and when such bases are acquired by the United States.⁴⁴

Under Annex "A" of the Bases Agreement, the following bases were listed:

Clark Field Air Base, Pampanga
Fort Stotsenberg, Pampanga
Mariveles Military Reservation, POL Terminal
and Training Area, Bataan
Camp John Hay Leave and Recreation Center, Baguio
Army Communication System with the deletion of all
stations in the Port of Manila Area
United States Armed Forces Cemetery No. 2,
San Francisco del Monte, Rizal
Angeles General Depot, Pampanga
Leyte-Samar Naval Base including shore installations
and air bases
Subic Bay, Northwest Shore Naval Base, Zambales
Province, and the existing Naval reservation at
Olongapo and the existing Baguio Naval
Reservation
Tawi-Tawi Naval Anchorage and small adjacent
land areas
Cañacao-Sangle Point Navy Base, Cavite Province
Bagobantay Transmitter Area, Quezon City, and
associated radio receiving and control
sites, Manila Area

⁴⁴ *Id.* at 358.

Tarumpitao Point (Loran Master Transmitter Station), Palawan
Talampulan Island, Coast Guard No. 354 (Loran), Palawan
Naule Point (Loran Station), Zambales
Castillejos, Coast Guard No. 356 Zambales

Under Annex "B", the following bases were listed:

Mactan Island Army and Navy Air Base
Florida Blanca Air Base, Pampanga
Aircraft Service Warning Net
Camp Wallace, San Fernando, La Union
Puerto Princesa Army and Navy Air Base, including Navy Section Base and Air Warning Sites, Palawan
Tawi-Tawi Naval Base, Sulu Archipelago
Aparri Naval Air Base

As necessary extensions of said bases, akin to easements or servitudes in the Civil Law, the U.S. armed forces were allowed so much use of Philippine territory, as their operations required. Art. III of the Military Bases Agreement provides the following in this regard:

It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of territorial water and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.⁴⁵

VI. U.S. CONTROL OF PHILIPPINE MILITARY

We now turn to the question of control of the Philippine armed forces by the United States. This is most crucial to the reality of Philippine sovereignty, for such sovereignty is diminished or curtailed to the extent that the armed forces of the Philippines are controlled by the United States.

The root of this problem stems from an express provision of the 1935 Constitution, found in the original Ordinance appended to said Constitution, which remained in effect during the Commonwealth. Said provision states:

The Philippines recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces

⁴⁵ *Id.* at 359.

all military forces organized by the Government of the Commonwealth of the Philippines.⁴⁶

This provision was mandated in both Independence Acts.⁴⁷

As a step to ensure control over the armed forces of the Philippine Commonwealth, the U.S. Congress upon request of the U.S. President authorized as head of the Philippine Army, a general of the U.S. armed forces, who during such period of service would retain his rank in the U.S. military.⁴⁸ General Douglas MacArthur was designated by the U.S. President to head the Philippine Army, and the Philippine Army of the Commonwealth was trained and commanded by General MacArthur assisted by other U.S. military officers.⁴⁹ Apparently, the loyalty of the Philippine Army to the United States was undoubted, for when the Pacific War broke out, the entire Philippine Army was integrated into and made part of the United States Army, pursuant to the military order of the U.S. President dated July 26, 1941.⁵⁰

At the end of the war,⁵¹ the Filipino military who have trained under and fought with the U.S. military in Bataan and Corregidor found their loyalty to America rewarded with superior material benefits under U.S. veterans legislation.⁵²

(a) Service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under com-

⁴⁶ CONST. (1935), First Ordinance, sec. 1 (12).

⁴⁷ U.S. Philippine Independence Act, 47 Stat. 716 (1933), sec. 2 (1), U.S. Philippine Commonwealth and Independence, 48 Stat. 456 (1934), sec. 2 (a) (12).

⁴⁸ See Message from Resident Commissioner, received July 27, 1941, 40 O.G. 879 (1941).

⁴⁹ *Ibid.*

⁵⁰ Hereinbelow is reproduced the text of the order.

Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2 (a) (12) of the Philippine Independence Act of March 24, 1934, and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency and place under the command of a General Officer of the United States Army to be designated by the Secretary of War from time to time all of the organized military forces of the Government of the Commonwealth of the Philippines, provided that all naval components thereof shall be placed under the command of the Commandant of the Sixteenth Naval District of the United States Navy.

This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines from and after the dates and hours respectively indicated in orders to be issued from time to time by the General Officer of the United States Army designated by the Secretary of War.

⁵¹ Japan signed the terms of unconditional surrender on September 2, 1945 on board the USS Missouri in Tokyo Bay.

⁵² See codification in 38 USC Sec. 107 (1970).

manders appointed, designated or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, shall not be deemed to have been active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges or benefits upon any person by reason of the service of such person or the service of any other person in the Armed Forces, except benefits under —

(1) contracts of National Service Life Insurance entered into before February 18, 1946;

(2) the Missing Persons Act; and

(3) chapters 11, 13 (except section 412), and 23 of this title.

Payments under such chapters shall be made at the rate of one peso for each dollar otherwise authorized, and where annual income is a factor in entitlements to benefits, the dollar limitations in the law specifying such annual income shall apply at the rate of one Philippine peso for each dollar. Any payments made before February 18, 1946, to any such member under such laws conferring rights, benefits, or privileges shall not be deemed to have been invalid by reason of the circumstance, that his service was not service in the Armed Forces or any component thereof within the meaning of any such law.

(b) Service in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 shall not be deemed to have been active military, naval, or air service for the purposes of any of the laws administered by the Veterans' Administration except —

(1) with respect to contracts of National Service Life Insurance entered into (a) before May 27, 1946, (b) under section 620 or 621 of the National Service Life Insurance Act of 1940, or (c) under section 722 of this title; and

(2) chapters 11 and 13 (except section 412), of this title.

Payments under such chapters shall be made at the rate of one peso each dollar otherwise authorized, and where annual income is a factor in entitlement to benefits, the dollar limitations in the law specifying such annual income shall apply at the rate of one Philippine peso for each dollar.⁵³

Under the Veterans Benefits Act as extended to the soldiers of the Philippine Commonwealth, the following benefits were made available. Generally, four major types of veterans benefits were provided:

1. Compensation for Service-Connected Disability or Death;
2. Dependency and Indemnity Compensation for Service-Connected Deaths;
3. Hospital and Medical Care;
4. Burial Benefits.

Under Compensation for Service-Connected Disability or Death, the major types of benefits were the following:⁵⁴

- (a) Wartime disability compensation to the soldiers and to their dependents, additional compensation;

⁵³ Veterans Benefits Law of 1958, 72 Stat. 1105, 1111-1112 (1958).

⁵⁴ *Id.* at 1119-1121.

(b) Wartime death compensation.

Under Dependency and Indemnity Compensation for Service-Connected Deaths, the major benefits were the following:⁵⁵

- (a) Compensation to the widow
- (b) Compensation to the children
- (c) Compensation to the parents

Under Hospital and Medical Care, the major benefit was service for hospital and medical care for service-connected injuries, including travel expenses.⁵⁶

Many of these veterans became regular officers of the Armed Forces of the Philippines, some of them rising to the ranks of generals and occupying the highest posts in the Philippine military.

World War II in the meantime had brought about profound changes in the international situation.⁵⁷ The victory of the Allied Powers was followed by the liquidation of colonies, which made Great Britain a second-class power, and with their nuclear weapons, the United States and the U.S.S.R. became the contending superpowers. The Cold War intensified, as China fell to the communists,⁵⁸ then North Korea invaded South Korea,⁵⁹ and later, the Vietnam conflict developed out of a French collapse in Indo-China.⁶⁰

It is against this background that we must assess the Military Assistance Agreement between the United States and the Philippines. Armed with U.S. weapons provided under the War Surplus Property Act,⁶¹ and trained by U.S. officers in U.S. military campuses and training centers, the officer corps of the Philippine Armed Forces was steadily transformed not so much into the military elite of the Republic, as staunch fighters for the Free World under the leadership of the United States and its armed forces.

The opportunity and leeway of the U.S. military to turn the Philippine armed forces into auxiliary units of the U.S. armed forces, is manifest on the face of the Military Assistance Agreement, signed on March 21, 1947:

Article 6. For the purposes of this Agreement the military assistance authorized in Article 1 hereof is defined as the furnishing of arms, am-

⁵⁵ *Id.* at 1112.

⁵⁶ Veterans Benefits Law of 1973, 87 Stat. 184 (1973).

⁵⁷ These changes included, among others, the Berlin Blockade, the Marshall Plan, the cold war followed by *detente*, and nuclear monopoly followed by nuclear parity.

⁵⁸ The Chinese Nationalists led by Gen. Chiang Kai-shek fled to Taiwan in December, 1949.

⁵⁹ The North Koreans crossed the 38th Parallel on June 25, 1950.

⁶⁰ The French Fortress of Dien Bien Phu surrendered to Gen. Vo Nguyen Giap and his forces on May 7, 1954.

⁶¹ U.S. Surplus Property Act, 58 Stat. 765 (1944).

munition, equipment and supplies, certain aircraft and naval vessels, and instruction and training assistance by the Army and Navy of the United States and shall include the following:

(a) Establishing in the Philippines of a United States Military Advisory Group composed of an Army group, a Navy group and an Air group to assist and advise the Republic of the Philippines on military and naval matters.

(b) Furnishing from United States sources equipment and technical supplies for training, operations and certain maintenance of Philippine armed forces of such strength and composition as mutually agreed upon;

(c) Facilitating the procurement by the Government of the Republic of the Philippines of a military reserve of United States equipment and supplies, in such amounts as may be subsequently agreed upon.

(d) Making available selected facilities of United States Army and Navy training establishments to provide training for key personnel of the Philippine armed forces, under the conditions hereinafter described.⁶²

VII. FEDERAL LAW CONSTRAINTS ON ECONOMIC SOVEREIGNTY

In the matter of economic sovereignty, the curtailment is likewise clear on the face of federal legislation before Philippine independence was granted. Such curtailment was imposed on areas of great significance for Filipino control of the Philippine economy. Among the areas where federal legislation virtually interdicted or prevented change in the status quo were the following:

1. The national patrimony, consisting of some of the best lands and other natural resources taken over by the colonizers and foreign companies.
2. Special trade preferences.
3. Special rights for Americans and their companies.
4. Philippine currency and foreign exchange reserves.

In the area of national patrimony and natural resources, U.S. federal legislation mandated recognition and protection by the Philippine Constitution of four categories of rights in favor of the foreigners and their companies:

1. Rights acquired during the Spanish colonial period, and guaranteed under the Treaty of Paris of 1898.⁶³

⁶² Military Assistance Agreement with the U.S., March 21, 1947, I PTS 387, 388 (1968).

⁶³ Treaty of Peace Between the United States of America and the Kingdom of Spain, December 10, 1898, 30 Stat. 1754. Article VII, in part, reads:

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 impart the property or rights which by law belong to the peaceful posses-

2. Rights acquired by U.S. citizens under the Philippine Bill of 1902, and the Jones Law before the establishment of the Commonwealth.⁶⁴

sion 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.

⁶⁴ U.S. Philippine Bill, 32 Stat. 691 (1902). The relevant portion of this Act are herein reproduced:

Sec. 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.

* * *

Sec. 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 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.

* * *

Sec. 74. That the government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said Islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said provinces or municipalities: *Provided*, That no private property shall be taken for any purpose under this section without just compensation paid or tendered therefor, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted, and that no franchise, privilege, or concession shall be granted, to any corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States, and that lands or rights of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and concessions under which they were granted or upon their revocation or repeal. That all franchises, privileges, or concessions granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash, or for property at a fair valuation, equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the province or municipality within which such franchises are granted and exercised: *Provided further*, That it shall be unlawful for any corporation organized under this Act, or for any person, company,

or corporation receiving any grant, franchise, or concession from the government of said Islands, to use, employ, or contract for the labor of persons claimed or alleged to be held in involuntary servitude; and any person, company, or corporation so violating the provisions of this Act shall forfeit all charters, grants, franchises, and concessions for doing business in said islands, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not less than ten thousand dollars.

U.S. Organic Act of the Philippine Islands (Jones Act), 39 Stat. 545 (1916). Pertinent sections of this law include:

Sec. 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 and two, except such as may have heretofore been sold and disposed of for the benefit of 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 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 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.

* * *

Sec. 28. That the government of the Philippine Islands may grant franchises and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said provinces and municipalities: *Provided*, That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted, and that no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States, and that lands or right of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and rights under which they were granted or upon their revocation or repeal. That all franchises or rights granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public service corporations, shall provide for the effective regulation of the charges thereof, for

3. Rights of U.S. citizens and their companies during the Commonwealth.⁶⁵

the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the Province or municipality within which such franchises are granted and exercised; *Provided further*, That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving any grant, franchise, or concession from the government of said islands, to use, employ, or contract for the labor of persons held in involuntary servitude; and any person, company, or corporation so violating the provisions of this Act shall forfeit all charters, grants, or franchises for doing business in said islands, in an action or proceeding brought for that purpose in any court of competent jurisdiction by any officer of the Philippine government or on the complaint of any citizen of the Philippines, under such regulations and rules as the Philippine Legislature shall prescribe, and in addition shall be deemed guilty of an offense, and shall be punished by a fine not more than \$10,000.

⁶⁵ U.S. Philippine Independence Act, 47 Stat. 716 (1933).

Sec. 2. The Constitution formulated and drafted shall be republican in form, shall contain a bill of rights, either as part thereof or as an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands —

x x x

(1) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into service of such armed forces all military forces organized by the Philippine government.

* * *

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.

See also note 36.

, U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934).

Sec. 2(a). The Constitution formulated and drafted shall be republican in form, shall contain a bill of rights and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of sovereignty of the United States over the Philippine Islands —

x x x

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into service of such armed forces all military forces organized by the Philippine government.

x x x

Sec. 2(b) The Constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and 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.

See also note 34.

Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act, the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision,

4. Rights of U.S. citizens and their companies, up to 1974 under the Parity Amendment.⁶⁶

jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under sec. 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

⁶⁶ U.S. Philippine Trade Act, 60 Stat. 141 (1946).

Sec. 341. RIGHTS OF UNITED STATES CITIZENS 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.

* * *

Sec. 402. OBLIGATIONS OF PHILIPPINES. The President of the United States is not authorized by section 401 to enter into such executive agreement unless in the agreement the Government of the Philippines agrees —

x x x

(b) That 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 section 341 as is in conflict with such constitution before such amendment.

U.S. Philippine Trade Agreement Revision Act, Pub. L. No. 196, 69 Stat. 413, 419-421 (1955).

ARTICLE VI

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 either Party, and the operation of public utilities, shall, if open to any person, be open to citizens of the other Party and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of such other Party in the same manner as to and under the same conditions imposed upon citizens or corporations or associations owned or controlled by citizens of the Party granting the right.

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 thereof 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 Philip-

... pines 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 its 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 Party.

3. The United States of America reserves the rights of the several States of the United States to limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in the activities specified in this Article. The Republic of the Philippines reserves the power to deny any of the rights specified in this Article to citizens of the United States who are citizens of States, or to corporations or associations at least 60% of whose capital stock or capital is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines, or to corporations or associations which are owned or controlled by citizens of the Philippines. The exercise of this reservation on the part of the Philippines shall not affect previously acquired rights, provided that in the event that any State of the United States of America should in the future impose restrictions which would deny to citizens or corporations or associations owned or controlled by citizens of the Philippines the right to continue to engage in activities in which they were engaged therein at the time of the imposition of such restrictions, the Republic of the Philippines shall be free to apply like limitations to the citizens or corporations or associations owned or controlled by citizens of such States.

ARTICLE VII

1. The Republic of the Philippines and the United States of America each agrees not to discriminate in any manner, with respect to their engaging in business, against the citizens or any form of business enterprise owned or controlled by citizens of the other and that new limitations imposed by either Party upon the extent to which aliens are accorded national treatment with respect to carrying on business activities within its territories, shall not be applied as against enterprises owned or controlled by citizens of the other Party are engaged in such activities therein at the time such new limitations are adopted, nor shall such new limitations be applied to American citizens or corporations or associations owned or controlled by American citizens whose States do not impose like limitations on citizens or corporations or associations owned or controlled by citizens of the Republic of the Philippines.

2. The United States of America reserves the rights of the several States of the United States to limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in any business activities. The Republic of the Philippines reserves the power to deny any rights to engage in business activities to citizens of the United States who are citizens of States, or to corporations or associations at least 60% of the capital stock or capital of which is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines or to corporations or associations owned or controlled by citizens of the Philippines. The exercise of this reservation on the part of the Philippines shall not affect previously acquired rights,

While the first three categories were mandated for protection and recognition in the Philippine Constitution by the Tydings McDuffie Law, the fourth category of rights was mandated by the Philippine Trade Act of 1946 (known as the Bell Trade Act), and the Philippine Rehabilitation Act of 1946.

With respect to rights guaranteed under the Treaty of Paris, the Tydings McDuffie Law provided: "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."⁶⁷

With respect to rights acquired by U.S. citizens and companies under prior federal legislation, the Tydings McDuffie Act provided:

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.⁶⁸

With respect to rights of U.S. citizens and their companies during the Commonwealth period, the Tydings McDuffie Law further provided: "Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civic rights of the citizens and corporations, respectively, thereof."⁶⁹

With respect to all rights of U.S. citizens and their companies existing at the time of the proclamation of Philippine independence, the Tydings McDuffie Law finally provided:

That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be

provided that in the event that any State of the United States of America should in the future impose restrictions which would deny to citizens or corporations or associations owned or controlled by citizens of the Philippines the right to continue to engage in business activities in which they were engaged therein at the time of the imposition of such restrictions, the Republic of the Philippines shall be free to apply like limitations to the citizens or corporations or associations owned or controlled by citizens of such States.

⁶⁷ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 2(b) (4).

⁶⁸ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 5.

⁶⁹ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 2(a) (16).

acknowledged, respected and safeguarded to the same extent as property rights of citizens of the Philippine Islands.⁷⁰

The foreign rights were to be assured by a Treaty to be executed upon declaration of Philippine independence. Thus: "That by way of further assurance the Government of the Philippine Islands will embody the foregoing provisions (except paragraph 2) in a treaty with the United States."⁷¹

With respect to the parity rights of U.S. citizens and their companies after the granting of Philippine independence, the Bell Trade Act (Philippine Trade Act of 1946) provided:

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.

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.⁷²

To ensure that the urgent need of Filipinos for rehabilitation funds to help speed up economic recovery would be supportive of the American demand for parity rights under the Philippine Constitution, the Philippine Rehabilitation Act of 1946 expressly limited war damage payments to a maximum of \$500 per claim, unless the executive agreement was signed by the Philippine President, which mandated, among others, that the Philippine Constitution provide for parity rights to U.S. citizens and companies, as expressly required in the Bell Trade Act.⁷³

In the area of bilateral trade relations between the Philippines and the United States, Commonwealth Act No. 733⁷⁴ provided for the following:

⁷⁰ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 2(a) (12).

⁷¹ U.S. Philippine Commonwealth and Independence Law, 48 Stat. 456 (1934), sec. 2(b) (5).

⁷² Philippine Trade Act of 1946, Pub. Law No. 371, 60 Stat. 141, 151-152 (1946).

⁷³ *Id.* at 151.

⁷⁴ Entitled "An Act to accept the Executive Agreement to be entered into between the President of the Philippines and the President of the United States pur-

1. The trading interests of U.S. citizens in the Philippines were balanced against the need of U.S. farmers from competition from Philippine products, through quotas for Philippines products which were duty free for 8½ years (1947-1954) and then subjected to graduated tariffs over a twenty-year period.⁷⁵
2. The export proceeds under the quota system ensured a market for U.S. goods which entered duty free for 8½ years, and thereafter subjected to graduated tariff rates over a twenty-year period.⁷⁶

In the area of business, U.S. businessmen and their companies were granted special rights and privileges, particularly, to public utilities. In this regard, the Bell Trade Act provided:

[That] 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 the 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.⁷⁷

To safeguard American business in the Philippines from discrimination, the Bell Trade Act also provided:

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.⁷⁸

In the area of coinage, currency and foreign exchange reserves, the Bell Trade Act provided:

... 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 formally execute the same on or after July 4, 1946; To enact the provisions of parts 2, 3, 4, and 5 of title III of said Act of Congress as Laws of the Philippines during the effectiveness of said Executive Agreement; and to implement the final clauses of said agreement in order to carry out title I of the Philippine Rehabilitation Act of 1946."

⁷⁵ Commonwealth Act No. 733 (1946), Art. II (2).

⁷⁶ *Ibid.*

⁷⁷ *Id.*, Art. VII.

⁷⁸ *Id.*, Art. X (4).

The value of Philippine currency in relation to the United States dollar shall not be changed; the convertibility of Philippine pesos into the United States dollar shall not be suspended, and no restrictions shall be imposed on the transfer of funds from the Philippines to the United States except by agreement with the President of the United States.⁷⁹

The direct control of the United States over Philippine currency, and its foreign exchange reserves terminated only with the modification of the Bell Trade Act, through the Laurel-Langley Agreement, which took effect in 1955.⁸⁰ For nine years after Philippine independence was proclaimed, American control over our monetary system had persisted. By that time, of course, there was no more need for such restraint or restriction upon Philippine authority over its monetary system, for such restraints had been amply provided for under the Bretton Woods Agreement (IMF Charter)⁸¹ which the Philippines had accepted even before its independence under Commonwealth Act No. 699 dated November 20, 1945, (or seven months before the proclamation of independence).⁸² The Philippine acceptance was deposited with the U.S. Government on Dec. 21, 1945, or six months before independence. It went into force on Dec. 27, 1945.⁸³

CONCLUDING OBSERVATIONS

In juristic terms, the evidence in the form of the U.S. federal laws and enactments that we have reviewed is more than persuasive in establishing our thesis, and the conclusion is ineludible that the sovereignty of the Filipino people had been curtailed, truncated and disabled, at the inception of independence and beyond. While the Constitution of 1935 looked promising as the initial charter of national freedom, it was so impregnated with pervasive and overriding norms of U.S. federal law and the treaties that they spawned, that in operation and practice, it became the charter for continued tutelage and dependence. Intended or not, from 1946 onward, the 1935 Constitution was the instrument for imperialism in the Philippines; imperialism was prolonged after independence was proclaimed, and it operated in the guise of special relations. It is indeed a supreme irony, that the very instrument that vouchsafed to the Filipino people the sovereignty of their national will was, by the overriding impositions and restraints mandated by U.S. federal law, transmogrified or mongrelized into a Pandora's box mandating continued alienation of the national patrimony, the national economy, and the national sovereignty.

⁷⁹ *Id.*, Art. V.

⁸⁰ U.S. Philippine Trade Agreement Revision Act, 69 Stat. 413 (1955).

⁸¹ I PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE, FINAL ACT, BRETTON WOODS, NEW HAMPSHIRE, July 22, 1944, Department of State Publication 927 (1944).

⁸² Commonwealth Act No. 699 (1945), sec. 2.

⁸³ See Proclamation No. 27, Arts. IV, VIII, 41 O.G. 1036. (1945).

The persistence of this unhappy situation for almost four decades readily explains the prevailing turmoil in the Philippines; hence, such situation is truly the root cause of the continuing crisis. It should be easy to understand that if the Filipino people are not truly masters of their country, economy and patrimony, there is simply no way for them to solve their problems decisively. They will simply continue to be spectators in their own land, periodically roused from the torpor of their continuing poverty and by the entertainment of political exercises and spectacles that produce no meaningful change, even as they are blissfully ignorant of the contrivings and artifices that deepen the alienation and domination of their land and society.

We must, of course, bear in mind that we are dealing with a historical process, and that after four decades of continued alienation and domination, there is an erosion of innocence on the part of both the dominated and the dominating, so that increasingly, we hope the mystique of special relations has lifted, and there is a mutual awakening to the horror of imperialist domination.

Out of such awareness, now pervasive in Philippine society, our people must create and develop a new mode of leadership that is unswerving in its commitment to national independence.

1. Such leadership would stake all upon, and subordinate all that he holds dear to, this vision: a free and independent Philippines but friendly to America and to all other nations. From such vision, this new leadership will not be detracted, nor deterred, either by friendship, or family, or fortune, or even religion.

2. Such unswerving commitment and dedication, emblazoned by deeds and attendant sacrifices, will be the foundation and rallying center for the unity of all sectors of the Nation, conjoining what had long been conflicting and separate: the elitist and populist segments of our people.

3. Such leadership will endeavor to unite and hold together, rather than divide or alienate, the conflicting groups in our society, and will therefore institute power participation and decisional participation, in lieu of the power monopolies of the past forty years, and to this end, shall implant at all levels of public administration, the principle of collective decision and collective leadership.

4. Against the blandishments of any Foreign Power, such leadership shall be propelled by the collective will and interest of its people, which shall at all times be its shield, its mirror and its guide.

5. Under such leadership, the Nation shall be so organized that no group or sector, however small, shall be left out or ignored, and no interest shall hold sway that is not consistent with the interests of the greatest number.

In the struggle for national independence that is upon us today, and which we face tomorrow, what are the strategic objectives of the leadership?

For the past eight decades, our people have been ravaged by exploitation, and by consequent conflict, deprivation and poverty. The lessons of the past provide the directions for the struggle. Such lessons are clear: this country will know no peace, nor tranquility, nor progress nor prosperity, until our people and government attain full control of their armed forces and over the national economy.

For political sovereignty simply means that the people and their government control their military forces, and that such military forces control the national territory. Similarly, economic sovereignty simply means that the economy is controlled by Filipinos for the benefit of the greatest number of Filipinos.

The solution to our predicament is not anti-Americanism, nor anti-imperialism, nor even revolution. All these would escalate existing conflicts, and even precipitate wars that would impose unending burdens, assuming we are not consumed. What is really needed is a profound change in attitude. What the rich nations, including America, should realize is that domination brutalizes the perpetrator, even as the victim is impoverished and degraded. What the poor nations should realize, the Philippines among them, is that a life of shared dignity and self-fulfillment truly demands a moderate material base. The conjoining of these attitudes would engender a new and more fruitful relationship based on mutual respect and mutual benefit, with larger freedom and dignity for all.