THE PROPOSED NATIONALIZATION OF LABOR: A PREVIEW

*Rodolfo C. General**

A bill is pending which seeks to nationalize labor.[1] The erosion of nationalistic change has been finally impressed upon Filipino society so that a new national facade can no longer be denied. Really the old colonial way of thinking is gone and an attitude which is young, robust and sometime reckless in its impetuousity and inexperience has been imposed.

For more than five centuries, the Philippines, compared to the rest of Asia, was most receptive to the influence of Western civilization, a kind of passiveness that exasperated nationalists and made them lament over the supposed decay of a genuine Filipino culture. It is an irony that such change should come so late, behind in time to similar evolutions in other young countries, when the Philippines even before the outbreak of this century already made, among Oriental colonies, the first solid defiance against the West. Even then, however, the flow of nationalism into the Filipino mind has at last been so heavy that some of our statesmen have become serious about making the country's labor force dominantly Filipino.

The shift of history has been accomplished.

The first idea tinkered with in the bill was that Filipino citizens should comprise 95% of the personnel, including agents, employees, and/or laborers working for any person, association, or corporation, whether domestic or foreign, engaging in any enterprise, business, occupation, trade or profession in the Philippines.[2]

Certain exceptions were provided.

Thus, new and necessary industries, agricultural enterprises, trades, businesses and occupations, requiring technical and profes-

* LL.B., ATENEO LAW SCHOOL, 1957.

[1] This is the consolidation of Senate Bill No. 245 and House Bill No. 1517. The Senate's Committee on Labor and Immigration, under the chairmanship of Senator Roseller Lim, gave the following title to the consolidation: "An Act Providing For the Nationalization Of Labor In The Philippines And Penalizing The Violations Thereof."

[2] Senate Bill No. 245-House Bill No. 1517 § 1.

sional skills of the kind and in quantity that at the time could not be supplied locally, as certified to by the Secretary of Labor, should be allowed, for a period of three years, starting from the date the necessary license was secured to operate the same, to employ and engage the services of alien technologists the number of which should in no case exceed fifty per centum of the total number of technical workers employed by such person, corporation, or association.[3]

Again, it was provided that the necessary executive officers of any association or corporation having exclusive charge of the management and policies of said associations or corporations would not be covered by the Act.[4]

Moreover, any person, association, or corporation employing not more than four employees or laborers, and those organized and operated exclusively for religious, missionary, charitable, educational, athletic, artistic or scientific purposes, would be exempt from the provisions of the Act.[5]

However, it was not the intent of the bill to nationalise labor immediately. Rather, the businesses, professions and occupations affected would have to increase their Filipino employees or laborers according to a graduated scale: 20% within one year, 40% within two years, 60% within three years, 80% within four years, and 95% within five years after the approval of the bill; provided, however, that replacements or appointments after the enactment of the Act would be made only with Filipino citizens.[6]

Certain fines and imprisonments were also provided for violations of the Act. There were other provisions in the bill, but what has been shown here is the essence of it.

During the consideration of the bill in the senate, certain alterations were contemplated. For instance, it was proposed that the maximum number of Filipino employees or laborers in any given business, profession or occupation should only be 80% instead of the original 95%, with a corresponding modification of the pace of the graduated scale.[7] But, so far, the most important change contemplated

[3] *Id.*

[4] *Id.*

[5] *Id.*, § 4.

[6] *Id.*, § 5.

[7] The undersigned had the opportunity to attend the Senate's considerations of the bill. Senator Roseller Lim, who was sponsoring the bill on the floor, tried to propose these changes, believing that the original version would be too harsh for the aliens. However, he later co-authored an amendment by substitution which, in place of these alterations, would make the nationalization of labor prospective instead. At the time this article is published, the bill together with the amendment by substitution is still pending. But the chances are that the proposed nationalization of labor, in one form or another, will become law.

is the amendment by substitution introduced by Senators Pacita Madrigal-Gonzales, Lorenzo Sumulong, Quintin Paredes, Decoroso Rosales, Pedro Sabido, Lorenzo Tañada, Ferdinand Marcos and Estanislao Fernandez.

The proposed amendment by substitution will make the nationalization of labor prospective only.

The principal features are the following:

Any person, association or corporation authorized to operate or to engage in any business, occupation, trade or profession prior to the date of approval of this Act, having aliens in their employ, shall comply with this Act by increasing the minimum number of Filipino employees or laborers in their employ to 20% within one year from the date of the approval of this Act, to 40% within two years, 60% within three years, to 80% within four years, and to 100% within five years thereafter.[8]

Upon approval of the Act, no person, association or corporation, whether domestic or foreign, shall be granted a license to engage for the first time in any enterprise, business, occupation, trade or profession of any kind whatsoever, or to open and operate a new branch of an enterprise already established prior to the date of approval of this Act, unless the entire personnel, including agents, employees, and/or laborers, working for such person, association or corporation are citizens of the Philippines.[9]

Additional and/or replacement personnel shall henceforth be entirely citizens of the Philippines. In case of any layoff in the personnel of such persons, associations or corporations, the Filipinos in their employ must be the last to be affected thereby.[10]

Exceptions, however, are also provided.

New and necessary industries, agricultural enterprises, trades, business and occupations, requiring technical and professional skills of the kind and in quantity that at the time cannot be supplied locally, as certified by the Secretary of Labor, shall be allowed, for a period of three years, starting from the date the necessary license is secured to operate the same, to employ and engage the services of alien technologists the number of which shall in no case exceed 50% of the total number of technical workers employed by such persons, associations or corporations: Provided, That every person rendering service, whether gratuitously or for compensation, under

[8] Senate Bill No. 245-House Bill No. 1517 (Amendment by Substitution) § 6.
[9] *Id.*, § 1.
[10] *Id.*

contract or as a relative or friend, shall be considered as an employee for the purpose of this Act: Provided, further, That the necessary executive officers of any association or corporation having exclusive charge of the management and policies of said association or corporation shall not be covered by the provisions of this Act.[11]

Another exception is provided that any person, association or corporation employing not more than six employees or laborers, and those organized exclusively for religious, missionary, charitable, educational, althletic, artistic, scientific purpose, and non-profit corporations shall be exempt from the provisions of this Act: Provided, however, That the respective countries of the alien employees or laborers employed by such person, association or corporation grant the same privilege to Filipino citizens in said countries.[12]

Some fines and imprisonments are imposed on violations of the Act. While there are some other provisions included in the bill, the foregoing represents the essentials of it.

THE CONSTITUTIONAL ISSUE

During the deliberation of the bill in the senate, the possibility that it might be unconstitutional haunted the senators. It will not be surprising if the issue of unconstitutionality will continue to weigh upon their minds. Actually, the proposal to nationalize labor by excluding to a major extent aliens from the country's labor force affects not only the alien's right to labor but also the employer's right to hire labor, whether the employer is a Filipino or not. Relevant jurisprudence, however, seems to have the habit of giving only a single answer to cover both aspects of the question.

The proponents of the bill must justify it, ultimately, by invoking the police power of the state.[13] On the other hand, those who intend to attack the constitutionality of the bill must draw their arguments from the due process and equal protection clauses which are the traditional safeguards of citizens against invalid use of police

[11] *Id.*, § 2.
[12] *Id.*, § 5.
[13] Willoughby defines police power:
"From what has been said it sufficiently appears that the police power knows no definite limit. It extends to every possible phase of what the courts deem to be the public welfare: — it is a general right upon the part of the public authority to abridge, or, if necessary, to destroy, without compensation, the property or contract rights of individuals, and to control their conduct in so far as as this may be necessary for the protection of the community or of a particular class of community, against danger in any form, against fraud, or vice, or economic oppression, or even for the securing of the public convenience." 3 WILLOUGHBY ON THE CONSTITUTION OF THE UNITED STATES § 1176, at 1774 (1929 ed.).

power.[14] It is Mr. Justice Labrador, in penning the decision in Ichong v. Secretary of Finance,[15] who furnishes the first clue which may lead the mind to rest upon truth:

> The conflict therefore between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to co-exist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercises it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty or property, provided there is due process of law; and persons may be classified into classes and groups, provided everyone is given the equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification has been made, there must be a reasonable basis for such distinction.[16]

With this statement as guide during the conflict of opinions, which of the contending parties will prevail? Which of them will merit the favor of reason? It is the intent of this article to speculate, with the means available, what the law most probably shall be; in the words of Mr. Justice Holmes, "the object of our study then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts."[17]

[14] Mr. Chief Justice Taft gives an illumined description of the due process and equal protection clauses and their inter-relation:

"It may be that they [the two prohibitions] overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not conterminous... The due process clause... of course tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's rights of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principles of equality of application of the law.

... But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of unequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process." Truax v. Corrigan, 257 U.S. 254, 263 (1921).

[15] G.R. No. L-7995, May 31, 1957.

[16] *Id.*

[17] "When we study law, we are not studying a mystery but well known profession. We are studying what we shall want in order to appear before judges, or to advise people in such a way as to keep them out of court.

... The object of our study then, is prediction, the prediction of the incidence of the public force through the instrumentality of courts." HOLMES, *The Path Of The Law* in THE JUSTICE HOLMES READER 61 (Julius Marke ed. 1955)

In the resolution of the issue, we have to consult Anglo-American commentaries which, after all, were effective sources of our political law. Above all, we have to lean most heavily upon the ideas peculiar to the Philippine Constitutional Convention which may not be found elsewhere among the traditions of civility that have come from western civilization. From these foreign conceptions about liberty and government which bore themselves upon the minds of the convention members and from the political philosophies spun by the members themselves, as finally elaborated by our courts, has sprung the meaning of the Philippine Constitution.[18]

In common law, it is a fixed principle that the legislature cannot forbid any person or class of persons from engaging in a lawful business that is not injurious to others, and a citizen who is willing to comply with all the reasonable regulations which may be imposed upon a calling, occupation, or business which is not necessarily injurious to the community cannot be deprived of his right to pursue it.[19] Hence, a statute cannot be upheld as a police regulation where it confers no benefit on the public or any portion of the community and results only in injury by prohibiting citizens from following a beneficial vocation. The legislature may regulate when regulation will protect, but may not suppress when inhibition will in-

[18] The narration of Aruego about the origins of the Philippine Constitution is of pertinent interest:

"The Philippine Constitution has its roots in the past of the Filipino people. The political institutions that it set up and the political philosophies woven through its provisions were not struck off for the first time by the delegates in convention assembled; they had been tested in the crucible of experience of the people, particularly during the last three decades of their constitutional development."

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"... Where Philippine precedents were lacking, rather than attempt to set up institutions or follow political philosophies never set up or adopted before in any other country, the Convention considered precedents of American origin that might with advantage be incorporated into our political system; and this, with reason, in view of the fact that our political heritage was largely dominated by American political thought. But even in this case, the Convention carefully considered the precedents from the point of view of their adaptability or suitability to Filipino psychology and traditions".

"... But while the dominating influence was American, the Constitution bears traces, in some aspects of the influence of the Malolos Constitution of the ephemeral Philippine Republic, the German Constitution, the Constitution of the Republic of Spain, the Mexican Constitution, and the Constitutions of several South American countries, and the English unwritten constitution, all of which have been frequently consulted during the Convention days." I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 93-94 (1937 ed.).

[19] Blaker v. Hood, 53 Kan. 499, 36 P. 1115, 24 L.R.A. 854; Marymont v. Nevada State Bkg. Bd., 33 Nev. 333, 111 P. 295, 33 L.R.A. (N.S.) 477, Ann. Cas. 1914 A. 162; State v. Scougal, 3 S.D. 55, 51 N.W. 858, 15 L.R.A. 477.

jure the party pursuing the lawful vocation, and proper regulation will prevent injury to others.[20]

A calling may not be prohibited by the legislature, unless it is inherently injurious to the public health, safety, or morals or has a tendency in that direction.[21] Elsewhere it has been held that the test is found in the effect the pursuit of the calling has upon the public welfare rather than in the inherent nature of the calling itself.[22] No matter which test is applied, a police regulation restricting to the extent of prohibiting an ancient, honorable, and necessary calling must be justified on the ground that such prohibition is essential to the public health, safety, convenience, comfort, or morals.[23]

Furthermore, to warrant the state in absolutely prohibiting a business, it is not sufficient that it is conducted by methods employed which render it injurious to the public by demoralizing legitimate business, by introducing the element of chance, by cheating and defrauding purchasers or others. It is not enough that it seriously interferes with and even destroys the business of others.[24]

So then, excluding those exceptional cases where public health, safety or morals deem it otherwise, the general rule in American law is that police power may not be taken advantage of in order to exclude anyone from some innocent and legal business, profession or occupation that does not require any special skill, presumably including within the protection the mass of aliens residing within the state.

Yet the principle cited above remained in general form and did not thresh out categorically the issue about the validity of excluding aliens from the nation's labor employment. The matter finally came to a head, when **Truax v. Raich**[25] was elevated for adjudication before the U.S. Federal Supreme Court. The facts of the case were the following:

On December 1914, the state of Arizona passed a law providing that any company, corporation, partnership, association or individual who employed or might thereafter employ more than five workers at any one time, in Arizona, regardless of kind or class of work or sex of workers, should employ not less than 80 per cent qualified electors or native born citizens of the U.S. or some subdivision thereof. The law further provided that violation thereof would be subject to fine and imprisonment.

Mike Raich, a native of Austria, and an inhabitant of the state of Arizona, but not a qualified elector, was employed as a cook by a certain William Truax, Sr. in the latter's restaurant in the City of Bisbee, Arizona. Truax had nine employees, of whom seven were neither "native born citizens" of the U.S. nor qualified electors. After the passage of the law, Raich was informed by his employer that when the law was proclaimed, and solely by reason of its requirements and because of the fear of the penalties that would be incurred in case of its violation, he would be discharged. Thereupon Raich filed this case which he won in the State Supreme Court of Arizona and from which Truax appealed to the U.S. Federal Supreme Court.

In striking down the law as unconstitutional, the U.S. Federal Supreme Court said:

> It is sought to justify this act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of livelihood. It requires no arguments to show that the right to work for a living in the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.... If this could be refused solely upon the grounds of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens, unless restrained, was a peril to the public welfare.' The discrimination against aliens in the wide range of employment of which the act relates is made an end in itself, and thus the authority to deny aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor, is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the state, and it will not be disputed that these cannot be broadly conceived as to bring into hostility the exclusive Federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government... The assertion of an authority to deny aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the

[20] Adams v. Tanner, 244 U.S. 590, 61 L ed. 1336, 37 S. Ct. 662, L.R.A. 1917F, 1163, Ann. Cas. 1917D, 973; People v. Weiner, 271 Ill. 74, 110 N.E. 870, L.R.A. 1916 C, 775, Ann. Cas. 1917C, 1065; Marymount v. Nevada State Bkg. Bd. 33 Nev. 333, 111 P. 295, 32 L.R.A. (N.S.) 477, Ann. Cas. 1914A 162; Com. v. Atlantic Coast Line R. Co. 106 Va. 61, 55 S.E. 572, 7 L.R.A. (N.S.) 1086, 117 Am. St. Rep. 983, 9 Ann. Cas. 1124.

[21] State v. Armstrong, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835.

[22] Ex parte Tindall, 102 Okla. 192, 229 P. 125; State ex. rel. Davis Smith Co. v. Clausen, 65 Wash. 156, 117 P. 1101, 37 L.R.A. (N.S.) 466.

[23] State ex rel. Kempinger v. Whyte, 177 Wis. 541, 188 N.W. 607, 23 A.L.R. 67.

[24] State v. Dalton, 22 R. I. 77, 46 A. 234, 48 L.R.A. 775 Am. St. Rep. 818.

[25] 239 U.S. 131 (1915).

country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the states as choose to offer hospitality.[26]

It should be noted, however, that, despite this liberal attitude in the U.S. towards aliens, the Federal Supreme Court admitted in the same decision that, for the sake of health, safety, morals and welfare it might be necessary for the legislature to impose certain inhibitions upon aliens. This exception was taken up again by Mr. Justice Douglas who called it the rule of "special public interest" in his judgment in **Takahashi v. Fish And Game Commission,**[27] which was decided in 1948.

The Takahashi case is important, for, after 23 years, the high tribunal therein made a lucid clarification about the Truax doctrine. In the Takahashi case it was held that a California law was unconstitutional which prohibited the issuance of a commercial fishing license to aliens, mostly Japanese, who were ineligible for citizenship. It was reasoned, in part, that the equal protection clause forbade a state to enact legislation which prevented aliens from earning a living in the same way that other state inhabitants earned their living. Mr. Justice Douglas explained the stand of the U.S. Federal Supreme Court in the Truax case, a comment which crystalized most expertly the rationale behind the Truax rule:

> However, the Court there went on to note that it had on occasion sustained state legislation that did not apply alike to citizens and non-citizens and non-citizens, the ground for the distinction being that such laws were necessary to protect special interests either of the state or of its citizens as such. The Truax opinion pointed out that the Arizona law, aimed as it was against employment of aliens in all vocations, failed to show 'special public interest' with respect to any particular business... that could possibly be deemed to support the enactment[28]

Mr. Justice Douglas made another statement which both covered the issue in the Takahashi case and further clarified the Truax pronouncement:

> The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization... Under the Constitution the states are granted no such powers; they can neither add nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which im-

[26] *Id.*, at 135.
[27] 334 U.S. 409 (1948).
[28] *Id.*, at 417.

> posed discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held unconstitutional.[29]

Going back to the dispute being tried before the tribunal, he made the binding observation that "we are unable to find that the 'special public interest' on which California relies provides support for this state ban on Takahashi's commercial fishing."[30]

This, the Truax dogma with some polishing added by the Takahashi ruling stands as the synthesis of the American doctrine on the illegality of excluding aliens from the labor force, with the exception based on special public interest allowing some inhibition upon the rights of aliens, though it is an exception tolerated as a rather unpleasant rarity. The exception has even become a virtual outcast after the acid remarks by the U.S. Federal Supreme Court that "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality"[31] and that "only the most exceptional circumstances can excuse discrimination on that basis in the face of the equal protection clause."[32]

Indeed, the Truax case seems to be on all fours so that, by a straight adoption of its **ratio decidendi,** the present congressional move to nationalize labor, which in its salient characteristics is akin to the Arizona law nullified by the Truax pronouncement, can be construed to be contrary to our constitution. But then, before there can be a faithful reproduction of the Truax case in our jurisdiction, there must be serious consideration of the ideas that colored the framing and evolution of the Philippine constitution and the various ethnic, cultural and political traditions peculiar to the Philippines, whether their interplay, their uniqueness, their influence upon the flow of judicial and legislative process in this country can prevent the Truax doctrine from eroding decisively the massive nationalistic propensities that have at last prevailed upon contemporary Filipino thinking.

Mr. Justice Holmes was just expressing a simple truth when he made that memorable comment, "The fallacy to which I refer is the notion that the only force at work in the development of the law is logic . . . History must be a part of the study, because without it we cannot know the precise scope of rules which it is our busi-

[29] *Id.*, at 419.
[30] *Id.*, at 420.
[31] Hirabayashi v. U.S., 320 U.S. 81, 100 (1942).
[32] Oyama v. California, 332 U.S. 633, 646 (1947).

ness to know.[33] Our own Mr. Justice Malcolm, whose assistance in the growth of Philippine political law, may not be calculated, saw a similar truth in his study of how Anglo-American principles could be applied in this country:

> In interpreting and applying the bulk of the written laws of this jurisdiction, and in rendering its decisions in cases not covered by the letter of the written law, this court relies upon the theories and precedents of Anglo-American cases, subject to the limited exceptions of those instances where remnants of the Spanish written law present well-defined civil law theories and of the few cases *where such precedents are inconsistent with local customs and institutions.*[34]

What then is the possible status of the Truax case in the Philippines, after a comparative analysis of the American and Filipino systems? Will it be, in the language of Mr. Justice Malcolm, "inconsistent with local customs and institutions"?

It can be seen from the decision that the U.S. Federal Supreme Court had to consider the American federal system whereby the power to admit and expel aliens from the Union is lodged in the Federal Government. Hence, as a necessary corollary, once an alien is lawfully admitted into the U.S., he should have all the rights which make up the essence of personal freedom and right to life, the elements of which may not be diminished by any of the states of the Union, since such diminution will result in an untenable contradiction between them and the Federal Government, leading to the disruption of the federal system itself. It was because of this anomaly that the U.S. Federal Supreme Court had no choice but to nullify the Arizona law, more so when the exception, where special public interest would justify some inhibitions upon the rights of aliens, could not be invoked, since it could not be proven that, under the economic conditions of Arizona, employment of aliens would imperil public welfare.

But the situation in the Philippines is different. In the Truax case it was admitted that nationalization of labor would amount in the end to expulsion of aliens, a power that could not be arrogated by the state of Arizona since it was possessed exclusively by the Federal Government. In the Philippines, however, there will be no split in the exercise of this power; it will be the state itself, by virtue of the national system which is the governmental system of the Philippines, that will use the power which it has in the first place.

And such exercise of this power has fixed footing on international law, because of which, as will be shown later, it acquires also

[33] HOLMES, *op. cit. supra* note 2 at 92, 94.
[34] In re Shoop, 41 Phil. 213, 254-55 (1920).

a touch of constitutionality. Such exercise falls squarely under the accepted principle of international law that a territorial sovereign, as a consequence of its territorial sovereignty, may expel a considerable number of aliens en masse if their continued presence within its domain will be detrimental to itself so that such expulsion is necessary for its own well-being:

> States differ with respect to the causes that are regarded as sufficient to justify the expulsion of aliens. No commonly accepted tests of such causes are available. Thus in practice, an aggrieved State enjoys a wide latitude...it would be difficult to maintain that as yet the law of nations forbids a State to expel from its domain aliens belonging to a particular race, *however imprudent such action may be.*
>
> A territorial sovereign may in fact proceed to expel a considerable number of aliens en masse if their continued presence within its domain is deemed to be highly detrimental thereto. It may be difficult in the particular case to establish any impropriety in such action, even though it may operate harshly upon individuals who find themselves suddenly obliged to leave the country. Respect for the dictates of humanity is, however, likely to be found wanting when national exigencies encourage a State to rid itself in short order of large numbers of aliens.[35]

This American statement finds agreement in the English school of thought, the latter saying almost the same thing: "States are generally recognized as possessing the power to expel, deport and reconduct aliens. Like the power to refuse admission, this is regarded as an incident of a State's territorial sovereignty. Not even a State's own citizens are immune from this power, as witness the denationalization and expulsion by certain States in recent times of their own nationals.[36]

[35] I HYDE INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES § 63, 64A, at 234-36 (1951 ed.); italics supplied.

[36] "States are generally recognized as possessing the power to expel, deport and reconduct aliens. Like the power to refuse admission, this is regarded as an incident of a State's territorial sovereignty. Not even a State's own citizens are immune from this power, as witness the denationalization and expulsion by certain States in recent times of their own nationals."

"The power to expel and the manner of expulsion are, however, two distinct matters. Expulsion (or reconduction) must be effected in a reasonable manner and without unnecessary injury to the alien affected. Detention prior to expulsion should be avoided, unless the alien concerned refuses to leave the State or is likely to evade the authorities. Also, an alien should not be deported to a country or territory where his person or freedom would be threatened on account of his race, religion, nationality, or political views. Nor should he be exposed to unnecessary indignity."

"International law does not prohibit the expulsion en masse of aliens, although this is resorted to usually by way of reprisals only. It may, however, be treated as an unfriendly act." J. G. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 267-68 (1954 ed.).

True, this is the viewpoint of international law, but nevertheless it throws distinctive light upon the issue of constitutionality in nationalizing labor. The constitution explicitly provides that the generally accepted principles of international law form part of the law of the nation. In explaining this part of the constitution, Aruego says:

> The second part of this declaration of principle — the adoption of the generally accepted principles of international law as a part of the law of the Nation—was borrowed from section 4 of the German Constitution and section 7 of the Constitution of the Republic of Spain.
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> The intention of the framers of the Constitution was to incorporate expressly into the system of municipal law the principles of international law, the observance of which would be necessary to the preservation of the family of nations which the Philippines was expected to join at the expiration of the Commonwealth period in the Tydings-McDuffie Law.
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> This provision is a formal declaration of what is considered to be the primordial duty of every member of the family of nations, namely, to adjust its system of municipal law so as to enforce at least within the jurisdiction the generally accepted principles of International Law.[37]

In fact, Martin adds a pointed commentary:

> Courts should likewise, in a proper case brought before it for determination, sustain the supremacy of the principles of international law over local statutes, orders or decrees except when the local statutes are justified under the police power of the State... The exercise of the police power cannot be infringed or restricted by any treaty or agreement.[38]

This provision of our fundamental instrument, precisely because it adopts international law as part of the laws of the nation among which must be the cited principle, gives constitutional permission to use the same principle in justifying the nationalization of labor. If the same principle was implemented to legalize harsher cases instituted by countries no more civilized than the Philippines such as the partition of Germany, the expulsion of Arabs from Israel, the solution of Trieste, etc., we may be given indulgence in invoking it to give legal and constitutional sanction to a lighter case, the nationalization of Philippine labor which is intended to be done with the least possible harm to aliens.

But aside from these arguments, there are deeper reasons for not accepting the Truax doctrine in this jurisdiction, furnishing hope that the exceptional rule of special public interest may validate the current movement towards nationalizing labor. In sum, these reasons may be derived from the vast difference between the econo-

[37] II ARUEGO, *op. cit. supra* note 3 at 144-45. See Phil. Const. Art. II § 3.
[38] MARTIN, PHILIPPINE CONSTITUTIONAL LAW 22-23 (1958 ed).

mic conditions between the U.S. and the Philippines and the growing divergence in the jurisprudential trends between the two, whereby the U.S. seems to drift towards a liberal tolerance of aliens while the Philippines, due to certain historical forces which it must contend for the sake of its own existence, has to seek a tighter national control of its resources even to the extent of sacrificing, in some instances, the interests of resident aliens.

At the time the Truax case was submitted before the U.S. Federal Supreme Court for its decision, American economy was fully in the hands of U.S. citizens so that any nationalistic law would be redundant and unnecesary in accomplishing an end that had already been accomplished and, on the other hand, it would result in the contraction of human liberty for no important reason whatsoever. It is no wonder then that the U.S. Federal Supreme Court did not hesitate to cut down the Arizona law, exactly because, aside from a mere and empty allegation that permitting aliens to labor within Arizona would endanger public welfare, there was no substantive evidence to indicate clearly that the Arizona economy was slipping into the pockets of aliens, a flow that could be stopped only by some agitation towards nationalization. Hence, the exception, that is, the rule of special public interest, could not be applied and, under these circumstances, said law of Arizona would really appear whimsical and unnecessary.

But one major task for the present generation of Filipinos is to transfer the national economy from alien to Filipino control. No less than our own Supreme Court itself admitted this in one of the most nationalistic comments ever formulated in the history of the high tribunal, the **Ichong v. Secretary of Finance**[39] case where, in upholding the nationalization of the retail trade as constitutional, it declared as a general principle: "The removal and eradication of the shackles of foreign economic control and domination, is one of the noblest motives that a national legislature may pursue. It is impossible to conceive that legislation that seeks to bring it about can infringe the constitutional limitation of due process. The attainment of a legitimate aspiration of a people can never be beyond the limits of legislative authority."[40]

In other words, in deciding whether the ruling is applicable, we have to consider the reality before us, in accordance with the general maxim that that force of the law is necessarily limited to the facts it is intended to redress, beyond which it has to be dispossessed of its **raison d'etre.** Mr. Justice Holmes aptly put it, "Still it is true

[39] G.R. No. L-7995, May 31, 1957.
[40] *Id.*

that a body of law is more rational and more civilized when every rule it contains is referred articulately and definitely to an end which it subserves, and when the grounds for desiring that end are stated or are ready to be stated in words."[41] He said it more definitely, thus:

> . . . when we are dealing with words that also are a consistent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. *The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.*[42]

There is a growing disagreement on this matter between the present directions of the American and Philippine juristic systems.

It is the American tradition that the Federal Union is supposed to be the hegemony of different peoples from different lands who, upon their migration to America, are allowed to retain their native cultures and yet, somehow, who evolve and assume the culture of their adopted country, freely, spontaneously, because of the attraction of American way of life without the compulsion of any nationalization law. It is not surprising therefore that such tradition would be reflected in U.S. decisions and laws which frown upon forced movements towards nationalization.

It was Dean Pound himself who said, "What is peculiar to Anglo-American legal thinking, and above all to American legal thinking is an ultra-individualism; an uncompromising insistence upon individual interests and individual property as the focal point of our jurisprudence."[43]

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[41] HOLMES, *op. cit. supra* note 2 at 73.

[42] Missouri v. Holland, 252 U.S. 416, 433 (1920).

[43] Cited in I TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING 11. Teller himself adds an enlightening contribution on this point:

> "Natural rights theorizing and the notion of the entrepreneur's right to a free and open market added to the content of the common law a conception of individualism whose doctrinnaire assertion of laissez-faire included intuitive thinking about the role of the individual, the psychological component of which was an ideal of privacy of personal destiny, and whose underlying belief put faith in personal initiative and individual effort as best means of achieving a social order. Such, then, is the background of American law." *Id.*, at 1-11. Whatever may be said about the demise of laissez-faire today, much of the imprint of the individualism that laissez-faire gave to American law during its heyday still remains. Surely, this sense of individualism explains, to a large part, the liberal tradition of American law.

This trait in American legal thoughts is illustrated luminously in the manner by which aliens' rights to own land in the U.S. have been resolved. In 1923, the ruling in **Terrace v. Thompson**[44] upheld a state law forbidding aliens to own lands within said state. As every student of Philippine law knows quite well, there is the same principle embodied in the Philippine Constitution itself prohibiting aliens to own land in the Philippines.[45] While this constitutional prohibition has become virtually a sacramental term in Philippine jurisprudence, specially after the rendition of the great case of **Krivenko v. Register of Deeds**,[46] the same cannot be said about its counterpart in the U.S. As Professor Leo Pfeffer noted: "In **Terrace v. Thompson** the Court, in 1923, had upheld a State law forbidding aliens to own land; but the authority of this decision was greatly weakened twenty-five years later in the case of **Oyama v. California**... It is probable that, should the question be presented squarely, the Court would overrule **Terrace v. Thompson** and invalidate laws barring aliens from acquiring real estate. State courts in California and Oregon have so held after the Takahashi and Oyama cases were decided."[47]

This ominous inclination of American courts, it is believed, is not an isolated invention but an expression fully representative of the individualistic and liberal philosophy underlying the American legal system. It was this philosophy, which has precipitated this trend, that must have been the motivating cause for the liberal tone of the Truax case. The matter is compounded by the fact that the same legal system has been besieged by too much racial discrimination, a problem that could not be fully solved by a civil war and, almost ninety years after that war, would still need, for a solution, a specific condemnation of such discrimination by the U.S. Federal

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[44] 263 U.S. 197 (1923).

[45] "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines." PHIL. CONST. Art. XIII § 5. Other pertinent constitutional provisions: *Id.* § 1, 2, 3, 4.

[46] 79 Phil. 461 (1948). "It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our construction is to preclude aliens, admitted freely into the Philippines, from owning sites where they may build their homes. But if this is the solemn mandate of the Constitution, we will not attempt to compromise it even in the name of amity or equity. We are satisfied, however, that aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire." *Id.* at 480-81.

[47] PFEFFER, THE LIBERTIES OF AN AMERICAN 232 (1957 ed.)

Supreme Court itself in the great case of **Brown v. Board of Education**[48] in 1954. No wonder then, such persistent race trouble would beget a stiffer reaction against racial discrimination.

But the situation in the Philippines, even in its judicial decisions, is exactly the opposite. The thinking of our Supreme Court is veering towards a radically different direction, as demonstrated by a comparison of its pronouncements from 1945, on the eve of the country's independence, up to the present.

In **Raquiza v. Bradford**[49] it appeared that the petitioners therein were arrested by the U.S. Army and their detention continued even though they were not informed of the nature of the accusation against them, no complaint or information charging them with any specific offense was filed against them in any court of tribunal, and they were never given even a summary hearing. They were simply arrested by the U.S. Army after liberation on the vague suspicion that they had collaborated with the Japanese during the war. There having been no sign that they would be turned over to the Philippine Government or that they would be released, the prisoners filed a petition for a writ of habeas corpus.

The Supreme Court dismissed the petition on the fond faith in the goodness of the U.S. Army, that "these military authorities, we can safely presume, will not deny to the petitioners any remedy which may be available under the military laws and under the prevailing circumstances. The United States army forces which have come to the Philippines for the express purpose of liberating the Filipinos and to restore them to the blessings of liberty under a democratic government, just as fast as the military situation would permit, would not be—we can justly assume—the very ones to take from them any of their liberties without legeal reason or justification. But the present state of the world is such that military exigencies or military necessity may, under certain circumstances, still require some limitations on the restoration or enjoyment of those liberties. The present case is, in our opinion, one such situation."[50]

In the same case, commenting on the issue of exempting the U.S. armed forces from Philippine civil and criminal jurisdiction in certain instances, the Supreme Court averred that "if a foreign army permitted to be stationed in a friendly country, 'by permission of its government or sovereign,' is exempt from the civil and criminal jurisdiction of the place, with much more reason should the Army of the United States which is not only permitted by the Commonwealth Government to be stationed here but has come to the islands and stayed in them for the express purpose of liberating them, and further prosecuting the war to a successful conclusion, be exempt from the civil and criminal jurisdiction of this place at least for the time covered by said agreement of the two Governments."[51]

[48] 347 U.S. 483 (1954).
[49] 75 Phil. 50 (1945).
[50] *Id.*, at 60.

By this implied forgiveness slipping out of its words, the high tribunal, apparently, was still under the spell of that indulgent friendship with which the Philippines then was looking at American. Probably because of benevolent colonialism and a war so recently ended, the logic of sentiment waxed over the logic of reason. The nagging controversy that would rock the relation between the two countries a decade later, on the same issue of jurisdiction as provided in the same status-of-forces agreement, was still far off.

In 1948, however, a note of nationalism appeared in the Krivenko case where the Supreme Court, in line with the nationalistic idiosyncracies of the constitution, forbade aliens to own residential land in the Philippines. A deeper pigment of nationalism was exhibited in 1950, when the high tribunal ruled on **Dee C. Chua & Sons v. Court of Industrial Relations,**[52] upholding an order of the Court of Industrial Relations allowing the company to hire "about twelve (12) more laborers from time to time and on a temporary basis", with the proviso in the order that the **"majority of the laborers to be employed should be native."** The full force of this nationalism that was gathering momentum through the years finally burst forth in 1957 as the Supreme Court, in **Ichong v. Secretary of Finance, supra,** agreed on the constitutionality of nationalizing the retail trade. No other case before, in the whole history of the high tribunal, ever contained the same passionate ring of nationalism. Indeed the spirit of it thus finally came to maturity.

And this flow of judicial thoughts should be expected, since it is in line with the backdrop of the Philippine constitution.

By a mere transitory reading of the express words of the Philippine constitution and the deliberations of the Philippine constitutional convention, one can readily discern that nationalism was one of the most persuasive forces, if not the most persuasive, that ever suffused the constitution in each of its words, from one provision to the next.[53]

[51] *Id.*, at 63.
[52] 85 Phil. 431 (1950).
[53] **"It should do well to refer to the nationalistic tendency manifested** in various provisions of the Constitution. Thus, in the preamble, a principal objective is the conservation of the patrimony of the nation and as corollary thereto the provision limiting to citizens of the Philippines the exploitation, development and utilization of its natural resources. And in Section 8 of

It is surprising how much the delegates to the convention tried to nationalize almost every principal element of the national activities. They tried to nationalize the following:

1. Retail trade,
2. Business of warehousing, milling, selling, or other dealings in rice, corn and other cereals;
3. Public works contracts;
4. Public utilities and other natural resources;
5. And most important for the present discussion, labor.[54]

Aruego gives a vivid description of the struggle of the constitutional convention to nationalize labor:

> There appeared to be a strong sentiment in favor of including in the Constitution a provision which would nationalize labor in the Philippines, as shown in the amendments presented to the office of the Secretary of the Convention immediately after the release of the first draft of the Constitution.
>
> It was said in defense of the amendments that, following the practice of other countries, labor in the Philippines should be nationalized in order to protect Filipino laborers and employees against the competition of foreigners; and that the inclusion of a provision, if not directly nationalizing labor in the country, at least authorizing the National Assembly to pass laws to protect Filipino citizens against the competition of alien laborers and employees. The opponents of the amendment based their arguments primarily upon the fact that their inclusion in the Constitution would only tend to antagonize rather than befriend other nations. They said that there was no necessity for nationalizing all agricultural, commercial, and industrial establishments of the country, although some of them conceded that enterprises vital to the life of the nation might be nationalized. What should be done, they added, was to leave it to the lawmaking body to decide whether or not to nationalize labor and to determine what particular labor should be nationalized and the time to nationalize the same; for after all, when the public welfare so required, the lawmaking body by virtue of the police power of the State had the authority to pass the corresponding measure.
>
> In the course of the debates it became gradually evident that a great number of delegates, inspired by a spirit of intense nationalism, were determined to push through the amendments nationalizing labor; and it also appeared evident that there was a sufficient number of delegates whose votes would assure the passage of one or the other of the amendments.

Article XVI, it is provided that 'no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines'...can it be said that a law imbued with the same purpose and spirit underlying many of the provisions of the Constitution is unreasonable. invalid and unconstitutional?" The Supreme Court answered its own question with a negative reply, resulting in the legality of the law nationalizing the retail trade. Ichong v. Secretary of Finance, *supra* note 39.

[54] See II ARUEGO, FRAMING OF THE PHILIPPINE CONSTITUTION 650-69. (1937 ed.).

> Had it not been for the intervention of President Manuel L. Quezon who personally objected to the amendments because he sincerely believed with the opponents that the same would only be inviting the antagonism of the countries whose nationals in the Philippines would be affected, one or the other of the amendments would certainly have been approved. In the course of the deliberations, acting on the counsel of the Filipino leader, many of the delegates formerly pledged to support one or the other of the amendments were won over to the opposition, so that when the amendments were submitted separately for the consideration and vote of the Convention, they were all disapproved.[55]

Nowhere among those who opposed the move to nationalize labor was there even a hint that such move would impinge the rights of due process and equal protection or any of those enumerated in the Bill of Rights which are the usual limitations controlling the exercise of the police power. On the contrary there was even a hint among them that, constitutionally it would be warranted by the police power of the state, according to the way the members of the convention interpreted such power.[56]

To be specific, their objection was not constitutional but practical: at a moment in the history of the country when support by nations abroad was needed to support the inclusion of the Philippines among the community of independent states, such move, which could antagonize them, would be untimely. Rather, it was their intent, and it was a clear intent indeed, to leave the responsibility of nationalizing labor to future generations who could manifest their opinion on the matter by positive enactments. The failure to insert into the constitution a provision nationalizing labor was not on the basis of unconstitutionality but rather on account of the need for expediency as demanded by statesmanship at that moment.[57]

What then is the effect of such procedure devised by the constitutional convention?

If we have to follow, as we should, the manner by which the Supreme Court decided the Ichong case, then the conclusion is inescapable that, by leaving the responsibility to future generations, the constitutional convention gave to them the lawful authority to pass such nationalization law. In the Ichong case one of the strongest reasons why the high tribunal accepted the constitutionality of the law nationalizing the retail trade was that the constitutional convention felt it necessary that such an act should be left to Congress, instead of being permanently embodied in the primary instrument. To the Supreme Court, such a scheme conceived by the convention

[55] *Id.*, at 654-57.
[56] *Id.*
[57] *Id.*

amounted to its giving permission for such measure, if ever, under the proper circumstances, it is taken up by the legislature.[58]

If that was done in the Ichong case, what can prevent one from making the same conclusion in the present issue?

There is, moreover, another thing which, of all that has been said, may contribute the best omen of what the Supreme Court will do, once the present riddle is finally brought before it for solution, —the case of **Dee C. Chuan & Sons v. Court of Industrial Relations, supra.**

Here, a labor dispute between a company and its laborers was docketed before the Court of Industrial Relations. While the case was pending for hearing, the company, because the strike was still on, requested for permission from the Court of Industrial Relations to hire temporary laborers until the litigation was finally settled and the regular employees resumed their work. The Court gave its order allowing the company to hire "about twelve (12) more laborers from time to time and on a temporary basis", with the proviso that "the majority of the laborers to be employed should be native." The company objected to the order, saying that, since it discriminated against alien employees, it was unconstitutional.

The Supreme Court affirmed the order, with a reason that seems to promise what the future possibly shall be: "the order under consideration meets the test of reasonableness and public interest... the court may specify that a certain proportion of the additional laborers to be employed should be Filipinos, if such condition, in the court's opinion, 'is necessary or expedient for the purpose of settling disputes, preventing further disputes or doing justice to the parties.' "[59]

Admittedly, the issue is far from settled.

The decision itself is weak and definitely not conclusive. The Supreme Court spoke in guarded terms, with the warning that the ruling was not intended to be a national policy but strictly limited to the facts of the case. Moreover, the high tribunal itself could maintain only a slim majority in the face of the sharp dissents of Mr. Justices Ozaeta, Paras, Montemayor and A. Reyes. In fact, the dissents appealed to the Truax case because of which, it was argued, even congress itself could not create such an order.

Perhaps one reason for this difficulty encountered by the Supreme Court was that the case was not well discussed, overlooking specially the peculiar history of the constitutional convention. Yet, because the majority, however slim it was, displayed again a sign of nationalism, the case is a fascinating omen on which one may hammer out one's prophecy.

Going back to the Ichong opinion that the removal and eradication of the shackles of foreign economic control and domination is one of the noblest motives that a national legislature may pursue, then it can be said that if—and Congress may so find that—nationalization of labor is needed to free national economy from alien control and dominance, then such movement will have the approval of the constitution itself, just as much as it was in the nationalization of the retail trade.

THE PRACTICAL ISSUE

The wheels have really turned. From a colony fully subservient to the colonizing power, the Philippines has become a state tenderly conscious of its great heritage and potency and aggressively determined that such potency will be fulfilled in the fertile climate of freedom and independence. Indeed, the nationalists succeeded in their work. But one should remember that there is a tendency to swing from one extreme to the other with disaster lying in ambush in either of these extremes. Fulton J. Sheen said it well:

> There is such a thing as a *Zeitgeist*, or a Spirit of the Times, varying with the time and overflowing into all the disciplines of the human mind. The spirit of one age is not clearly demarcated from another, for history is not rigid in its divisions. A study of these various *Zeitgeists* reveals that what one generation believes to be true, the next generation believes to be false....
>
> Lyricism always accompanies this Spirit of the Age. Lyricism is the interpretation of philosophy, politics, religion, literature, art and God, in terms of the particular Spirit of the Age enjoying popularity at the moment. *The progress from one Spirit of the Age to another is not vital like the growth of cell from cell, but mechanical like the swing of a pendulum. The thought of the Spirit of the Age grows by contradiction, rather than by intussusception and assimilation.*[60]

There is an existing peril that our nationalism may be just too much, that in our passion to conserve and nourish our native ideals,

[58] "The framers of the Constitution could not have intended to impose the constitutional restrictions of due process on the attainment of such a noble motive as freedom from economic control and domination, through the exercise of the police power. The fathers of the Constitution must have given to the legislature full authority and power to enact legislation that would promote the supreme happiness of the people, their freedom and liberty. On the precise issue now before us, they expressly made their voice clear: they adopted a resolution expressing their relief that the legislation in question is within the scope of the legislative power..." Ichong v. Secretary of Finance, *supra* note 39.

[59] 85 Phil. 431, 434-35 (1950).

[60] SHEEN, PHILOSOPHY OF RELIGION 3 (1948 ed.).

we will reject everything that is foreign, however beneficial it may be to us. In the vitality of our growth as a young nation, we are terribly in need of all the skills, whether of us or not of us, to serve as tools in the building of our race. Certainly we cannot go back to the past and serve again under alien bondage. But while we are masters of our own house and destiny, there is some wisdom in the thought that we can use aliens as our minor partners to benefit from their skills without our ceasing to be the lords of ourselves. That will be impossible, however, under the fury of gross nationalism. In taking too much for ourselves, we may find that there is nothing much anymore to retain.

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