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APERTURA DE LA SESION

Se abre la sesion a las 9:30 a.m., ocupando el estrado el Vicepresidente, Hon. Ruperto Montinola, por designacion del Sr. Presidente.

EL VICEPRESIDENTE: Se abre la sesion.

DISPENSACION DE LA LECTURA DE LA LISTA Y DEL ACTA

SR. ESCARE AL: Señor Presidente.

EL VICEPRESIDENTE: Señor Delegado.

SR. ESCAREAL: Pido que se dispense la lectura de la lista y del acta, y que esta se de por aprobada,

EL VICEPRESIDENTE: ¿Tiene la Asamblea alguna objecion a la mocion? (Silencio,) La Mesa no oye ninguna. Queda aprobada.

MOCIÓN KAPUNAN

SR. KAPUNAN: Señor Presidente.

EL VICEPRESIDENTE: Señor Delegado.

SR. KAPUNAN: Presento la mocion de que despues que se hayan consumido las diez horas, de conformidad con el acuerdo anterior de la Convencion, se siga la discusion del asunto sobre la proposicion Osias, concediendo a todos y cada imo de los que quieran tomar parte en su discusion diez minutos para consumir sus turnos respectivos.

SR. ROXAS: Secundo la mocion.

EL VICEPRESIDENTE: ¿Hay alguna objecion a la mocion? (Silencio,) La Mesa no oye ninguna. Queda aprobada.

SR. KAPUNAN: Senor Presidente, cedo diez minutos al Delegado por Negros, Señor Ledesma.

MR. LEDESMA: Mr. President.

THE VICE PRESIDENT: The Gentleman from Occidental Negros has the floor.

SPEECH OF MR. LEDESMA

MR. LEDESMA: Mr. President and Gentlemen of the Convention: If the purpose of the resolution under discussion simply serves as a notice to the Members of this Assembly that the precepts to be embodied in the

Constitution of the Commonwealth may not be so limited in scope as to serve only the purpose of the transition period, but should be broad, so that the people of the free and independent Philippines ten years hence, may at their option deem it wise to continue under the same constitution, as expressed by the Gentleman from Capiz the other day, when I am in favor of the idea. But if the object of the resolution is to have the constitution we shall draft binding on the free and independent Philippines, I beg leave to disagree with said resolution on the following grounds:

The Philippine Republic which will be established at the end of the transition period will be an entirely new legal creation, with a personality distinct from that of the Commonwealth. Unlike its predecessor, the Commonwealth, it will have absolute sovereignty in the true sense of the word, a sovereignty which the Republic itself cannot alienate even to a part of its own organism. If it cannot do this contemporaneously, much less can a body foreign to it, such as we are now, do so prematurely and without any mandate from it. To have the fundamental law of the Philippine Republic prearranged and predrafted for it ten years in advance would be robbing the Philippine Republic of much of its glory. Such an act would be a usurpation of the most transcendental power of an independent state. At this juncture may I remind this august Body that usurpations like this have caused, and perhaps justified, revolutions in many countries. In these countries there were rulers in the past who upset the balance of their constitution by arrogating unto themselves the powers which would have been left to the people.

The scope of the authority of this Convention is defined and limited in very explicit language in Section 1 of the Tydings-McDuffie Law which provides that the delegates to this Convention shall "formulate and draft a constitution for the Government of the Commonwealth of the Philippine Islands ..." I submit that the expression "Commonwealth of the Philippine Islands," as used here refers to that juridical entity which will exist during the transition period. This can be deduced from two facts: First, the expression begins with a capital letter, indicating that it refers to an artificial person, and not to a thing; second, throughout the Tydings-McDuffie Law we come across distinctions made between the Commonwealth of the Philippine Islands as existing during the transition period and the "free and independent government of the Philippine Islands" which shall begin to exist after the transition period. In other words, there is a clear demarcation line between the transition government and the independent government, and the transition government is referred to as the Commonwealth of the Philippine Islands while the independent government simply as the free and independent government of the Philippines, leaving it to us to choose its official name.

During the transition period of 10 years we will have a wonderful opportunity of storing up a great deal of experience in constitutionalism. The most effective way to turn into account that wealth of experience will be to apply it in the renovation of our constitution at the beginning of the Republic. A wholesome revision of the constitution on a systematic and scientific basis is always preferable to a piece-meal, hit-or-miss amendment thereof. The former has direction, symmetry and proportion; the latter leads to chaos and confusion.

The argument has been advanced that constitutions are usually meant for all time and posterity and not for a determinate period. That is true, because usually there is no new state in sight. But our particular case is different. We anticipate the birth of a new na-tion. That new nation should be allowed to shape its own destiny without any fetters.

The most that this resolution can amount to is an expression of opinion. We can pass one thousand resolutions to this effect and yet not bind our people ten years from now for there is no such thing as an irrevocable law. If our people should want a new consti-tution for the Republic, who would prevent them?

The Gentleman from Batangas said yesterday that the Constitutional Assembly derived all its power from the people. To this I disagree because the constitution to be drafted by this Convention will derive its authority from

the people of the Philippine Islands only in a very limited sense because, as everybody knows, it shall require the approval of the President of the United States. However, if we draft an entirely new constitution for the Republic, it will not have to be submitted to any external authority; and only then can we proudly say to the word that our constitution is completely and absolutely the handiwork of our people.

The gentleman from Batangas further said, if I understand him well, that the people may say to us, "You have done so little when you have the power to do more." But the electorate that sent us here is of the belief that we will draft a constitution for the Commonwealth. I am sure that this is the consensus of opinion all over the Islands. For my part, I must confess that I do not have the nerve to go beyond the power and authority vested in me. We have had many cases of envoys and delegates who have been disauthorized by the people who sent them because they have assumed full responsibility, and have disobeyed and gone beyond the instructions given to them. I cannot speak for all of you, but as for myself I want to avoid the humiliation of being disauthorized by limiting myself to what I believe I have authority to do. How-ever, if the people afterwards believe that the piece of work that we have done is good enough to serve for a longer period of time, so much the better. But let them be the judge; therefore, let us not mention in the form of a resolution that the constitution we are drafting now is good and binding for all ages and all times.

MR. ROXAS: I yield fifteen minutes to the Gentleman from Ilocos Sur, Mr. Joven.

SPEECH OF DELEGATE JOVEN

MR. JOVEN: Mr. President and Gentlemen of the Convention: Yesterday, in the course of his speech before this august Body against the pending resolution, the Gentleman from Ilocos Norte, Mr. Ventura, argued against approval because, according to him, there is no necessity for it. He said that the provisions of the Independence Law are very clear; they empower this Constitutional Convention to formulate a constitution that will operate and be in force even beyond the period of the Commonwealth government. So clear are the provisions that there is no need for this Convention to pass the resolution. To me also it is plain from the provisions of the Independence Law that we have the power to draft such constitution.

But, Mr. President, the fact that some Delegates who already spoke have taken the stand and argued that this Convention has power to draft a Constitution that will operate only during the Commonwealth Government, is the best proof that we should act on the pending resolution. When such illustrious Members of this Body as Mr. Francisco of Cavite and Mr. Lorenzo of Zamboanga believe that under the terms of the Independence Law we do not possess that power to draw up a constitution extensive and operative when the Philippine Islands shall have become completely independent, the necessity now for defining the stand of this Convention on the matter is certainly obvious.

The Gentleman who preceded me contended that by making a constitution that will extend in force and operation even after independence, we bind our future generations, the inhabitants of the free and independent Philippines. I am not in accord with such view of the Gentleman. I believe that even though we draft a Constitution to serve not only for the period of the Commonwealth Government but also beyond it, the people of the Philippine Islands—when they are already independent and sovereign, and the supreme authority of government resides in them—shall always have the right and the authority to amend, change, or abrogate entirely, as they will, the constitution that we drafted. As sovereign people, they will have the right at any time to assert their paramount power and authority.

I am for the pending resolution in principle. I believe that its object or purpose is plausible and well taken. I believe that before we proceed further in the task of formulating a constitution for the nation, we should have a definite idea of its scope. I believe that we should determine now whether the constitution to be drafted by this

Convention can and should be made operative after the period of the Commonwealth Government or whether it should extend only during such period. The question should be settled now, in order that we may have a criterion to guide ourselves—the different Members and Committees of this Convention and the Convention itself as a whole—in formulating the various provisions of the constitution.

This, as I understand it, is merely and plainly the aim of the pending resolution. Should the Convention decide that the constitution is to operate only during the period of the Commonwealth Government—the transition period—then its provisions will be so framed that they will be effective only during that period. If, on the other hand, the Convention should determine that the constitution is to operate even after the transition period, then the provisions thereof will be worded accordingly. As there are Members of this Body who believe that this Convention is without power to draft a constitution that will operate or be in force even after the transition period, while other Members, like myself, maintain that it possesses such power and should avail itself of it, common sense dictates that it is at this stage of our deliberations when the provisions of the projected constitution are in the process of conception that the question must be definitely decided one way or the other.

I stand squarely on the proposition that this Constitutional Convention is empowered to draft and formulate a constitution that will operate not only during the period of the Commonwealth government but also thereafter, and that this Convention should draft and formulate such constitution.

The other day, a Member of this august Body who spoke on the resolution under consideration—he did not state whether he was really for or against the resolution—made a statement, if I understand him correctly, to the effect that it would be a source of pride on his part, on the part of the youth of this country, and on the part of future generations, if the constitution we are to draft will serve the Commonwealth Government and also a completely independent Philippine Government.

But it is not in this spirit, Mr. President, that I rise today to give expression to my sentiments favoring the resolution in its object and purpose. It is not the desire to enhance the powers, the importance, and the prestige of this Convention or of ourselves that has motivated me to take the stand that the constitution to be made can and should be extended in force and made operative beyond the period of the Commonwealth Government. I have so much respect for the majesty of the law that I would not, even for self-elevation, entertain for a moment the idea of arrogating unto this Convention powers that it did not have and of imposing upon it responsibilities not given to it. On the other hand, if we have the power, if we are charged with the duty and responsibility of formulating a constitution that will extend in operation beyond the transition period, no consideration of the difficulties that are likely to arise in drafting the provisions of the constitution will deter us from utilizing the power, from discharging and assuming the duty and responsibilities. To act otherwise would be a dereliction of duty. It would be cowardice.

But does this Constitutional Convention possess the power to draft a Constitution intended to operate and be in force even after the transition period? The Delegates who have already spoken against the resolution maintain that it does not possess the power. Others maintain that, even if given such power, nevertheless it should not express itself as possessing the power, for that is not necessary and because the Convention will thereby commit itself to a graver and more difficult task and responsibility which it may not satisfactorily fulfill. These are the two points I am going to discuss—that this Constitutional Convention has the power, and that it should and must make use of it.

I do not quite agree with the Gentleman from Capiz, former Speaker Roxas, when he said that a constitutional convention in the United States is not a sovereign body or that it has only limited powers. True, American authorities are not wanting who hold that a constitutional convention has only such powers as are expressly

conferred, and such other powers as may be necessarily implied from those expressly granted. But the weight of American authority is to the effect that a convention, when in session, is a fourth branch of the government, and it can even enact and promulgate a constitution without the approval of the people, although it is not a good policy to do so,

However, even if we were to adopt here the first view—what I may call the narrow view, that is, that a constitutional convention has only such powers as are expressly conferred by the legislative act under which it is assembled and such other powers as are necessarily implied from those expressly granted—I believe that this Convention is empowered to draft a constitution extensive and operative beyond the transition period. In the Act or law passed by the Philippine Legislature providing for the election of Delegates to this Convention, it did not prescribe the powers which the Convention would have, contenting itself with making a reference to the Independence Law passed by Congress; and rightly so, for it could not have enlarged the powers conferred upon the Convention by that Independence Act. Therefore, in determining the powers of this Convention and the extent thereof, I believe that we have to consult only the Independence Law. The law, to my mind, is the only yardstick by which the powers of this Convention should be measured. I believe that the point regarding sovereignty brought up in the discussion of the resolution is not germane to the question of whether we can draft a constitution that will operate and be in force even beyond the transition period. The point is, under the terms of the Independence Act, do we have the power to do that?

In my humble opinion, the words, "government of the Commonwealth of the Philippine Islands," found in Section 1 of the Independence Law and as used therein, are merely descriptive. They are not defining, limiting or restricting. My contention is supported or confirmed by a reference to other provisions of the Law itself, some of which are to be made necessarily a part of the constitution and which are to take effect or be in force after the period of the Commonwealth Government. With due respect to the Gentlemen who have expressed a contrary view, I contend that by clear provisions of the Act, we are to frame a constitution whose life limit will not be only during the period of the Commonwealth Government.

The opening part of Section 2 of the Independence Law reads: "The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, 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 the sovereignty of the United States over the Philippine Islands." If Congress had intended that the constitution authorized to be drafted under the Law would be in force only during the period of the Commonwealth Government, it would not have inserted in the law the words, "pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands." There would have been no necessity for those words. It would have simply said, "The constitution formulated and drafted shall be republican in form, shall contain a bill of rights," etc., without inserting the words, "pending the final withdrawal of the sovereignty of the United States."

The intention of those words clearly signify that the constitution may or will continue in force after said transition period. The mandatory provisions under said section will or may be set forth in an ordinance appended to the Constitution so that, being temporary in character and intended by Congress to be in force only during the Commonwealth Government, they (the mandatory provisions) will cease to exist upon independence, although the Constitution or the other parts thereof will yet be in force.

MR. ROXAS: I yield five minutes more to the speaker.

MR. JOVEN: (Continuing.) The first part of letter (b), Section 2 of the Independence Law, provides "that the constitution shall also contain the following, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands as hereinafter provided," the provisions required to be

embodied in the Constitution to take effect after the period of the Commonwealth Government, upon independence. If the Law intended that the Constitution will be in force only during that period, where, after said period, will the provisions be that are then to take effect? Either there will be a constitution or none at all. Those opposed to the pending resolution cannot eat their cake and have it too. The commission to be formulated by us is manifestly intended by Congress under the terms of the Independence Act to be in existence and in force even after complete independence is granted.

Mr. President, as I have a limited time, I will jump to another point.

The transition from the Commonwealth Government to the independent government will be automatic under the provisions of the Independence Law, dependent upon the expiration of ten years after the establishment of the Commonwealth. For this reason the Constitution will, as authorized, extend in force and operation after the Commonwealth Government has ceased to exist.

Taking into consideration the Independence Act as a whole, I believe there is no room for doubt that the words "Government of the Commonwealth of the Philippine Islands," in Section 1 thereof are merely descriptive, not limiting or restricting words. Any other interpretation will result in absurdity. Congress would be inconsistent and the provisions of the law contradicting. If I remember my law right, I believe that among the well-settled rules of interpretation and construction is that such interpretation as will result in absurdity should be avoided, and that where parts of a law are seemingly inconsistent, such interpretation will be adopted, if possible, as will reconcile the apparent inconsistencies and give effect to the whole statute.

MR. ROXAS: I yield five minutes more to the speaker.

MR. JOVEN: (Continuing.) I would like to digress from the question under discussion and take advantage of this opportunity to state that there will be no need of embodying in our Constitution the provisions of Section 6 of the Independence Law, those of Section 7 except paragraphs (1), (5) and (6), and those of Sections 8 and 9. Those provisions are per se not to be in the Constitution. Also, the Independence Law does not require that they be embodied in the Constitution. They will be binding upon the Philippine Government, even though they are not contained in the Constitution, because the Law is binding on us. My point is this: All of the provisions of the Independence Act will not have to be embodied in the Constitution, and the latter will not be very difficult to formulate in order to make it extend beyond the period of the Commonwealth Government.

Unless we are given another authority by the Congress during the Commonwealth Government to draft another constitution, we shall not have any other constitution at the end of that government than what this Convention will formulate. The constitution that will result from the deliberations of this Body shall remain the same constitution. It will be amended during the transition period, but it can only be amended in accordance with the means provided or to be provided therein. I do not believe in the assertion that the Filipino people will have the power to authorize the formulation of another constitution during the Commonwealth Government without the authority of Congress. Congress will have to act again, and, in my opinion, it will not be advisable to ask it for new authority to make another constitution, when it has given us today the power or right to formulate a constitution that will serve and answer our purposes. The formulation of a constitution intended to operate even after independence is given us will not deprive future inhabitants of any right in regard to the making of another constitution when the country becomes completely independent. The people will then be sovereign, the supreme authority residing in them. In the exercise of their supreme and sovereign power they will be at liberty to do away with the Constitution framed by us and change it with one entirely of their own making. After independence, it will be for them, thru their duly constituted representatives, to decide whether to continue or not with the Constitution we made. They will have the right to do as they please with it. They may have its provisions amended, or abrogated altogether.

The Legislature then existing may authorize the calling of a constitutional convention to formulate another constitution. In other words, the constitution we are to make will be in force until changed by the people, who can assert their paramount authority at any time. If our future generations will see fit to continue with it, if they believe that its provisions are still suited to their conditions and responsive to their needs, there will be no necessity for them to change it, and they will not change it, cherishing it gratefully as a memento of the wisdom and foresight with which their forebears faced and discharged their responsibilities.

Let me indulge in the hope, Mr. President, that we shall draft a Constitution—of which our posterity will not blush in shame—that will merit their approval, praise and respect. If we have the power to draft a constitution intended to operate and be in force not only during the period of the Commonwealth Government but also upon the advent of independence—and I trust I have shown that we have—then it is our duty to formulate such constitution. The responsibility is ours, its source being the people, to make a constitution extensive to the period when we are free and independent. We can ill afford to evade that responsibility. We must meet it like men. Let it not be said, Mr. President, that we in this Assembly—unlike our forebears who in peace and in war, in rain and sunshine, confronted their responsibilities unflinchingly—are timid and hesitant before our responsibilities, afraid to assume them, and failing to measure up to their heights.

MR. KOXAS: Mr. President, unless the Gentleman from Leyte objects, I would like to cede the Gentleman from Manila, Mr. Palma, two minutes so as to allow him to make a statement for the Record regarding incorrect reporting in the newspapers of his speech yesterday.

EL VICEPRESIDENTE: Tiene la palabra el Delegado por Manila.

DISCURSO DEL SR. PALMA

SR. PALMA: Sr. Presidente y Caballeros de la Convencion: Agradezco infinito el privilegio de permitirme hablar solamente con el proposito de rectificar lo publicado esta mañana, en cierta parte de la prensa, de que mi discurso de ayer da la impresion de que dudo de la independencia y que contradigo uno de los principios de mi partido. Considero, al propio tiempo, que es un privilegio de cualquiera de los Miembros de esta Asamblea el de no ser presentado al publico de distinto modo del que uno es y de que no se interpreten los discursos que uno pronuncia aqui en distinto sentido del que tienen. Yo no dije ayer, y creo que mi afirmacion lo sostendrian los Miembros de esta Convencion, que no creo en la independencia. Lo unico que dije era que posiblemente ocurran dos contingencias que pudieran impedir el advenimiento de la independencia, una por parte de los Estados Unidos, si este pueblo no demuestra la debida medida y discrecion durante el periodo de transicion; y otra por parte de los que no creen en la Independencia y pudieran crear un obstaculo para su definitiva realizacion, Y estas dos contingencias las presentaba en relacion con mi idea de que no debemos redactar la Constitucion para la Republica Filipina, porque estas contingencias podrian sobrevenir. Por lo tanto, deseo expresar mi protesta y mi rectificacion a lo publicado por la prensa esta mañana, Muchas gracias.

SR. SOTTO (V.): Sr. Presidente, para algunas preguntas al orador.

EL VICEPRESIDENTE: El tiempo del Caballero de Manila ya ha expirado y dicho Caballero ya se ha sentado.

SR. ROXAS: Sr. Presidente, concede un minuto mas de tiempo al Delegado por Manila para que pueda contestar las preguntas que desea dirigirle el Delegado por Cebu.

EL VICEPRESIDENTE: En ese caso, puede el Caballero de Cebu formular sus preguntas.

SR. SOTTO (V.): Su Señoría ha dicho que la prensa dijo que Su Señoría contradijo uno de los principios de su partido. Quisieramos saber si su partido ya tiene plataforma.

SR. PALMA: No hubiese aparecido eso si no tuviera ya plataforma.

SR. SOTTO (V.): Hasta ahora se desconoce la plataforma de su partido.

SR PALMA: Se ha publicado.

SR. SOTTO (V.): No se ha publicado.

SR. PALMA: La conozco y es bastante.

SR. KAPUNAN: Sr. Presidente, cedo diez minutos al Delegado por Tayabas, Sr. Godofredo Reyes.

EL VICEPRESIDENTE: Tiene la palabra el Delegado por Tayabas.

DISCURSO DEL SR. REYES

SR. REYES (G.): Señores de la Convencion, creo de mi deber, despues de oir tantos brillantes discursos, exponer de antemano, por que he de consumir un poco mas de tiempo y he de abusar un poco mas de la paciencia de los Sres. Delegados ahora presentes. No es mi proposito pronunciar un discurso sino solamente hacer algunas observaciones para aclarar el punto discutido desde hace mas de una semana en esta Convencion, y al propio tiempo presentar un aspecto del asunto que hasta ahora he esperado que se discuta, aunque en vano. En los brillantes discursos pronunciados anoche en esta Conven-cion, se ha discutido si tenemos o no tenemos facultad para radactar una Constitucion que rija para el Estado Independiente Filipino; se han citado disposiciones de la Ley Tydings-McDuffie y se ha arguido sobre si tenemos o no tal facultad. Señores, la cuestion es si tenemos facultad para preparar una Constitucion para el Gobierno Filipino Independiente, y los argumentos sobre este particular enteramente obscurecen el punto debatido. Si queremos, tenemos facultad para preparar desde ahora una Constitucion que rija para el Gobierno Filipino Independiente, y tambien una Constitucion para cuando sea aniquilado el gobierno independiente y vuelva a resucitar. Si queremos, podremos hacerlo. No hay cuestion, alguna sobre este aspecto legal del asunto. La facultad es inherente en nosotros, porque aunque hemos estado subyugados, la soberania de nuestro pueblo duerme latente en nuestros corazones y no ha podido ser arrancada por nadie.

El aspecto verdadero de la cuestion no es un aspecto legal, sino un aspecto politico y moral, un aspecto de conveniencia politica y de principio de moralidad. El primer punto sobre el cual debemos deliberar es si la cuestion de preparar o no preparar ahora una Constitucion para el Gobierno Filipino Independiente, es innecesaria como se ha dicho por muchos. Si fuera solamente in-necesaria yo votaria por la resolucion ahora mismo, porque no quisiera poder preparar desde ahora el legado politico que hemos de dejar a nuestra posteridad; pero Señores, no solamente es innecesaria, sino que es ademas denigrante para el pueblo filipino, para todos y cada uno de nosotros que estamos presentes aqui; seria degradar a nuestro pueblo y cometer una injusticia muy grande, una injusticia moral para el pueblo que nos ha elegido.

Señores, todos sabemos que la Constitucion que esta-mos redactando ahora se va a someter al Presidente de los Estados Unidos para su aprobacion; de modo que si nosotros hacemos una Constitucion para el Commonwealth y esa Constitucion al propio tiempo la hacemos para el gobierno Independiente de Filipinas, entonces someteremos al Presidente de los Estados Unidos la Constitucion de nuestro Gobierno Independiente. ¿Por que razon hemos de someter a una persona extraña, aunque sea el Presidente de los Estados Unidos, aunque sea el Presidente del Congo, por que hemos de someter nuestra propia Constitucion que ha de ser la expresion de todos nuestros ideales, de todas nuestras esperanzas de todas nuestras aspiraciones, la expresion exclusiva de nuestra soberania sin limitaciones ni restricciones? ¿Que dira el President de los Estados Unidos de nuestro pueblo que le somete la Constitucion que debe preparar por si mismo, que debe ser de su exclusiva responsabilidad? Seriamos el

hazmerreir de todo el mundo. ¿Por que hemos de someter nuestra soberania a otra, que debe ser completa y exclusiva? ¿Por que la hemos de someter a un hombre extraño? No hay razon alguna. Esa es la razon que estaba esperando de algunas disertaciones de las muchas que hemos oido en esta Asamblea. Someter al Presidente de los Estados Unidos esa Constitucion, seria, como si nosotros preparamos una bandera filipina y despues fueramos al gobierno de los Estados Unidos a preguntar si le convienen o no le convienen los colores de esa bandera; si le conviene o no le conviene el tamaño de la bandera que hemos adoptado; seria un acto no solo pueril, sino un acto despreciable de dependencia y servilismo. Vamos a figurarnos, Señores, por un momento, que nosotros redactamos esa Constitucion del Gobierno Filipino Independiente. Esa Constitucion es la concrecion de nuestros ideales y debiera escribirse si es posible, con la sangre de todos los que se sacrificaron por nosotros, vamos a suponer que la presentamos al Presidente de los Estados Unidos, ¿que diria el Presidente? No puedo aprobar ni desaprobado semejante Constitucion, porque esta fuera de los limites de la Ley que el Congreso ha aprobado. El Congreso no dijo al pueblo que preparara su Constitucion para un gobierno independiente soberano. ¿Que diria el Presidente de los Estados Unidos si ese pueblo, que se ha declarado digno de tradiciones gloriosas, ha preferido degradar su propia soberania, sometiendolo "sometiendome a mi lo que debieran ellos hacer por si mismos, sin ingerencia extraña"? Yo, Presidente de los Estados Unidos, educado en las tradiciones libres y verdaderas. voy a respetar la soberania de ese pueblo. Esto, Señores, seria una bofetada al pueblo filipino; un acto de verdadera, humillacion; un acto del cual tendriamos que avergonzarnos para siempre. Vamos a suponer, Señores, que el Presidente de los Estados Unidos no diga nada, que se conforma con revisar la Constitucion de nuestro gobierno independiente. Todos nosotros sabemos que, segun la Ley Tydings-McDuffie, el Presidente de los Estados Unidos puede objetar a ciertas disposiciones y devolvernos la Constitucion y decir que la cambiemos. ¿Se conformarian ustedes con que la Constitution del pueblo filipino independiente y soberano, pueda ser objeto de objeciones por el Presidente de los Estados Unidos, y que el Presidente de los Estados Unidos pueda decir que tales disposiciones no deben estar en nuestra Constitucion y que tal otra disposicion es la que debe estar ahi? ¿Pueden ustedes consentir que el Presidente de los Estados Unidos imponga las disposiciones que han de regir en nuestra Constitucion como pueblo independiente? Repito, Señores, me seria renunciar a una de las piedras mas hermosas de nuestra soberania, si no renunciar a la esencia misma de nuestra soberania; seria cometer una verdadera injusticia al pueblo si permitieramos que las disposiciones de nuestra Constitucion puedan ser impuestas por otra persona extraña a nuestro pueblo. Que imponga ahora limitaciones y restricciones a esta Constitution o mal llamada Constitucion que ha de regir mientras estemos subyugados, pero que jamas imponga restricciones a una Constitucion del gobierno independiente en el que nosotros seremos los unicos y exclusivos soberanos. Si permitieramos tal cosa, seria nuestra Constitucion un documento que en lugar de ser glorioso me daria verguenza legar a nuestra posteridad.

SR. ARANETA: Para algunas preguntas al orador.

EL VICEPRESIDENTE: El orador puede contestar, si le place.

SR. REYES (G.): Si, señor.

SR. ARANETA: ¿Esta conforme el orador con la idea lanzada por el Delegado Palma, quien, no obstante estar opuesto a la resolucion, opina sin embargo que la Constitucion no ha de ser letra muerta despues del gobierno de la Mancomunidad sino que continuara en vigor, a menos que sea enmendada?

SR. REYES (G.): He dicho que yo mismo me avergonzaria de legar a la posteridad una Constitucion de esa clase. La Constitucion que ahora preparamos, necesariamente ha de regir hasta que nosotros preparemos otra; pero si nosotros, que por mas de trescientos años hemos aspirado a la independencia, cuando se proclame nuestra independencia no perdemos ni un minuto y suprimimos todas las disposiciones que no nos convengan o que nos afrenten, y las sustituimos por otras que sean la expresion de nuestros ideales, sin limitaciones, ni restricciones de

ninun genero....

SR. FRANCISCO: Ha expirado ya el plazo del orador.

SR. KAPUNAN: Concedo dos minutos mas al Caballero de Tayabas para contestar las preguntas del Cabellero de Manila.

SR. ARANETA: ¿Quiere decir el orador que estaria dispuesto a favorecer una disposicion constitucional en el sentido de que la Constitucion que aprobemos ahora auto-maticamente seria letra muerta cuando se declare la independencia de Filipinas?

SR. REYES (G.): No estoy conforme con ninguna disposicion de esa naturaleza que produzca taf efecto inmediatamente despues de la independencia. Supongo que el Caballero de Manila seria el primero en sufrir, porque en Manila empezarian todas las revueltas; lo que digo yo es que inmediatamente despues de proclamada la independencia, por practicas intemacionales, por sentido comun, las leyes ahora vigentes deben continuar hasta que no adoptemos una nueva Constitucion que sera nuestra propia, que no haya sido sometida a ningun soberano extraño.

SR. ARANETA: En su opinion honrada, ¿cual seria el mecanismo para que nosotros podamos aprobar otra Constitucion cuando seamos independientes, es decir, si la autoridad para convocar una nueva Convencion Constitucional, emanaria de las disposiciones que nosotros escribamos en esta Constitucion con respecto a la forma de enmendarla, o emanaria de alguna otra autoridad distinta de las disposiciones que nosotros incluyamos con respecto a la forma de enmendar esta Constitucion?

SR. REYES (G.): Voy a contestar la pregunta de Su Señoria dirigiendole otra: ¿Como y bajo que autoridad se prepare y se promulgo la Constitucion de Malolos en nuestra fenecida Republica Filipina?

SR. ARANETA: ¿De modo que entiendo, por la pregunta del orador que el esta a favor de que la nueva Constitucion que aprobemos cuando seamos completamente independientes, sea una Constitucion que no derive su nacimiento de la forma que nosotros instituyamos con respecto a las enmiendas a esta Constitucion que nosotros aprobemos ?

SR. REYES (G.): Sea cual fuere. Que conteste de donde provino la Constitucion de Malolos. De alli ha de provenir nuestra Constitucion. Como se hizo entonces, asi se hara ahora. Es un precedente que puede resolver todas las dudas.

SR. ARANETA: Es todo, y muchas gracias.

MR. ROXAS: Mr. President, I yield twelve minutes to the Gentleman from Cagayan.

MR. PIO: Mr. President.

THE VICE PRESIDENT: The Gentleman from Cagayan has the floor.

SPEECH OF MR. PIO

MR. PIO: Mr. President and Gentlemen of the Convention: After hearing the masterful arguments of the Gentlemen who have already spoken in favor of the resolution under debate, I find myself feeling reluctant to speak in its favor for fear that I might only disappoint them in the face of their convincing logic. But, Mr. President, I also fear that if I should not rise and make known my stand in favor of this question I would be recreant to my duties as one of the humblest Delegates of this Body.

I sincerely believe that there are three vital points which we should not fail to consider in discussing this

resolution. The first is whether this Constitutional Convention has the legal power to formulate and draft a constitution that will extend not only throughout the period of the Commonwealth Government but also thereafter. The second is whether this Constitutional Convention can formulate and draft a constitution intended to serve not only during but also after the period of the Commonwealth Government. The President of the United States may disapprove it. The third is, in the event that the President of the United States sees fit to disapprove the Constitution, shall we lose our independence?

Mr. President, I sincerely believe that this Constitutional Convention can legally formulate a constitution for the Commonwealth Government. We are agreed that the provisions of Section 1 of the Independence Act, known as the Tydings-McDuffie Law, clearly and specifically show that there is no question about the power of this Convention. With respect, however, to the power of this Constitutional Convention to formulate and draft a constitution that will serve as the fundamental law of the and after the period of the Commonwealth Government, I believe that there is room for an honest difference of opinion. It is not my intention to clash with the legal luminaries of this Body: but I, for one, sincerely believe that this august Body can draft and formulate a constitution that will serve as the fundamental law for the Commonwealth and also for the independent Philippines.

Section 10 (a) of the Tydings-McDuffie Law specifically provides that after the transition period the President of the United States shall recognize the independence of the Philippine Islands as a free and self-governing and independent nation and shall acknowledge the control of the government then constituted under the Constitution in force. Section 10 (a) also provides that the President of the United States shall acknowledge the control of the government constituted under the Constitution in force at that time. When said President recognizes the independence of the Philippine Islands what shall be the Constitution then in force? Inasmuch as the Tydings-McDuffie Law does not authorize the calling of another constitutional convention during the transition period nor is there any other law authorizing the calling of such convention, there will then be no other constitution in force than what this Body shall have formulated and drafted.

Likewise, Section 2, paragraph (b), Subsection 2 of the same Law provides that the officers elected and serving at the time independence is recognized, shall continue as such by virtue of the Constitution under which the government has been constituted. What shall be that Constitution adopted by the people under which those officers will be serving the government then? Certainly, there shall be no other constitution adopted under the provisions of the Tydings-McDuffie Law then the very document which this Body will formulate and draft. Furthermore, Section 2 of the same Law, provides two classes of mandatory provisions; namely, (1) the provisions that will take effect only during the period of the Commonwealth government, and (2) the provisions that will take effect only after the independence of the Philippine Islands shall have been recognized. If the intention of the United States Congress was not to authorize this Convention to formulate a constitution for the independent Philippines, why did the American Congress authorize or oblige this Convention to include mandatory provisions that are to take effect only after independence shall have been recognized? Because had Congress kept silent, those mandatory provisions that will take effect only after the recognition of the independence of these Islands shall have no effect and shall not be binding upon the new officers or upon the independent Government of the Philippine Republic, unless they are now included in and made part of this Constitution which shall then be the Constitution of the Philippine Republic.

For all these reasons, Mr. President, I sincerely believe that this Constitutional Convention is legally authorized to, and can legally formulate and draft a constitution, not only for the period of the Commonwealth Government, but even after.

Mr. President, my second point is whether, in the event this Constitutional Convention formulates and drafts a

constitution this document is intended to serve as a constitution for the Commonwealth Government and also for the government that will follow. I sincerely believe that the President of the United States will not disapprove a constitution formulated by this Body simply because it is intended to serve both the Commonwealth Government and the government that will follow. Section 1 of the Tydings-McDuffie Law provides that the constitution we must adopt has to conform to certain conditions and qualifications. Those are enumerated in the mandatory provisions, and in accordance with the oft-repeated rules of statutory construction, when the law makes an enumeration everything not enumerated is presumed to be excluded; therefore, only the conditions and qualifications enumerated in the mandatory provisions are the ones to which the constitution must be subjected. Although the constitution to be drafted is intended for the Commonwealth Government or for the government following after, provided that it contains those mandatory provisions, it will still be and it will have to be signed and approved by the President of the United States.

In the third place, in the event that the President of the United States decides to disapprove the Constitution, that will not mean that we shall have lost our much-coveted independence. The Tydings-McDuffie Law specifically provides that in case of Presidential disapproval, the Constitution will be returned to the Convention so that the latter can act thereon, after which the Convention and the President can then agree. In that case, we can be sure that even if the Constitution is disapproved by the President of the United States, it will not mean that we shall have lost our independence.

MR. PRESIDENT: The time of the Gentleman has expired.

MR. ROXAS: I yield three minutes more to the Gentleman.

MR. PIO: (Continuing.) It has been said here, Mr. President, that since the law is very clear in that we can make a constitution not only for the Commonwealth Government but also for the government that will follow, there is no need to pass this resolution. I contend that even if the law is very clear, yet we do not lose anything and we gain everything if we approve this resolution; so it is the duty of this Convention to approve said resolution. It has been always said here that because it is shown clearly that we do not need this resolution, it should be tabled. But I contend that this august Body should approve that resolution in order to define our stand.

SR. KAPUNAN: Sr. Presidente, concede quince minutos para el Caballero por Sulu.

EL PRESIDENTE: Tiene la palabra el Sr. Delegado por Sulu.

SPEECH OF MR. MONTAÑO

MR. MONTAÑO: Mr. President and Gentlemen of the Convention: All the points are already hackneyed and threshed out; consequently, I may consider myself as but a mere gleaner. A gleaner is he who picks up here and there grains or anything left in the field. So, I consider it my privilege to plead for your indulgence.

This is really a very difficult and important matter to discuss. At the same time, I consider it also very easy and trivial. It is difficult because we are going to frame a constitution that will serve as our monumental document, a superlaw. And it is very easy because we have the source of all arguments—the Tydings-McDuffie Law.

First of all, I feel proud of the fact that most of the Members of this Convention are lawyers of good reputation, lawyers of fame as jurists. Others are brilliant and erudite philosophers and scholars in different intellectual walks of life. We have President Osias, a man reputed as brilliant in all his opinions and especially insofar as his love of country is concerned. I praise and admire those who favor the resolution because of their sterling and unflinching patriotism. But I say that patriotism in time of peace, like the present, must be conducive and must be within the law, within the norm of conduct that is known to everybody. In every profession, in every school, social or

personal intellectual activity, the rule or the norm of conduct must prevail. If this is so, I shall now discuss whether the resolution is necessary and should be approved, or otherwise.

This has been discussed and touched upon by many lawyers who preceded me from the legal standpoint of the resolution. I would like to make an addendum to what they have already said. Gentlemen, it is plain and simple that we should be guided by the rules and decisions of the courts of last resort. This is a law that we have to interpret. Shall the interpretation be guided by over-patriotism and shall it be done in such a way that we might be criticized by other intellectual luminaries coming from the United States? Many contend that the Tydings-McDuffie Law is very specific about the continuation of the constitution that we are to draft.

Gentlemen, you must understand and you will agree with me as to the law of necessity in case the two governments will succeed each other. The government that we are going to establish here is not sovereign, as has been said. It is a partial sovereignty imparted to us by the conqueror. There are limitations to that sovereignty which are embodied in the mandatory provisions. Upon termination of this government after all the conditions shall have been complied with, as President Palma has stated here, for a period of exactly ten years during which time we shall look after the welfare of the Filipino people, after passing through this period of test, so to say, then a full and complete sovereign state will spring up. When this time comes, who will convene to frame the Constitution? For answer, let me read this passage by an authority on Constitutional Law:

"A convention has no inherent rights; it exercises delegated powers only. Delegated power defines itself. To be delegated it must come in some adopted manner, to convey it by some defined means. This adopted manner, therefore, becomes the measure of the power conferred. The right of the people is absolute, in the language of the Bill of Rights, 'to alter, reform, or abolish their government as they may think proper.' This right being theirs, they may impart so much or so little of it as they shall deem expedient. It is only determined by the mode they choose to adopt, the extent of the powers they intend to delegate. Hence, the argument which imputes sovereignty to a convention because of the reservation in the Bill of Rights is utterly illogical and unsound. The Bill of Rights is a reservation of rights out of the general power of government to themselves, but is no delegation of power to a convention. It defines no manner or mode in which the people shall proceed to exercise their right, but leaves that to their choice. Until then it is unknown how they will proceed, or what powers they will confer on their delegates. Hence we must look beyond the Bill of Rights as to the mode adopted by the people, to find the extent of the power they intend to delegate." (Quoted from Wood's appeal, Supreme Court of Pennsylvania, 1874, 75 Pa. 59.) (Cases on Constitutional Law, p. 8.)

Now, speaking from the Filipino point of view, we always consider as sovereign by force majeure the right of conquest of another strong government, strong race or a strong people. This restrains us from considering, much against our will, that we are a sovereign people today, for what we now enjoy is merely imparted to us; a privilege, a little allowance to exercise the partial sovereignty we are now enjoying.

This government that we are going to establish and the constitution that we are called upon to frame are not absolute and cannot be binding, because of this principle which I have just read to you. The sovereign people, after the death or disappearance of the Commonwealth, will be the people of an independent Philippines, the people who, by right of sovereignty, will exercise the power to adopt the permanent, good, stable and enduring provisions of the Constitution, including the bill of rights as the source of our future democracy, full and stable; and to provide for other provisions inherent in the rights of full and complete sovereignty, as, for example, the treaty making power provisions and any others that until now are not in our power to provide for.

What then will be the effect if we assume unnecessary powers we do not have today and encroach upon the power of our future successors? If we follow the natural law that a man ought to die when he reaches the age for death, we may still be the component of the Filipino people ten years hence, but we cannot say that the Filipino body politic today will be the same one tomorrow. Of course, individuals will succeed each other for the perpetuation

of the race. The body police today will be the same one tomorrow, but circumstances and political ideas will change. We may have a republican form of government but only in a qualified way.

The provisions here cannot be cited in favor of the opposite view. For example, paragraph 16, Section (2) says: "That the officials elected and serving under the Constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the Constitution." How can we infer from this wording of the Law that the constitution to be framed will be the same one during the Republic? The Law is very specific. It says: "shall serve their full terms of office." After that full term, there must be a new term. Why did the Congress not put here.... "continue as public officers of the Republic?" This explains only the necessity of continuing the government until the Filipino people will be able to establish another one.

MR. MONCADO: Mr. President, will the Gentleman yield for a question?

THE VICE PRESIDENT: The Gentleman from Sulu may answer if he so desires.

MR. MONTAÑO: I will answer the Gentleman if I be given an extension of time.

SR. KAPUNAN: Cedo dos minutos mas.

MR. MONCADO: The Gentleman mentioned a while ago that the present government may not be the government of the future, is that right?

MR. MONTAÑO: No I did not say that. I mean the people today, you and I and everybody here, may not live beyond tomorrow. If we follow the natural law of death, we may live up to old age and witness the coming of independence. But, if we do not follow the natural law of death, it may come and call on us anytime.

MR. MONCADO: The Gentleman also mentioned sovereign power and sovereignty. Will he distinguish de facto sovereignty from de jure sovereignty?

MR. MONTAÑO: There is no de facto sovereignty, but there may be de facto government. What I meant when I was speaking previously is that after the ten-year transition period, ipso facto the complete and absolute sovereignty of the Filipino people will come.

LAVANTAMIENTO DE LA SESION

SR. ROMERO: Sr. Presidente, pido que se levante la sesion hasta el lunes, 3 de septiembre de 1934, a las 4:00 de la tarde.

EL VICEPRESIDENTE: Si no hay objecion, se levanta la sesion hasta el lunes 3 de septiembre de 1934, a las 4:00 de la tarde.

Eran las 11:03 a.m.

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