COMMITTEE REPORT NO. 24

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COMMITTEE REPORT NO. 24
Submitted by the Committee on Commerce on
September 15, 1934

Mr. President:

Your Committee on Commerce has the honor to submit herewith a Constitutional precept, as approved by the said Committee, which reads as follows:

Five years after the inauguration of the Commonwealth Government, only citizens of the Philippine Islands and of the United States, and firms, partnerships or corporations on whose issued stock or capital at least seventy-five per centum is held and owned by said citizens, may engage in the retail business.

The operation of this provision shall be suspended insofar as it may be in conflict with any treaty of the United States applicable to the Philippines until one year after the said treaty has ceased to be operative in the Philippine Islands.

It is requested that the same be submitted to the consideration of the Sponsorship Committee as soon as possible. Attached herewith is an explanatory statement in support of the proposed constitutional precept.

This is a partial report of the Committee and we trust that within another week, your Committee will be in a position to submit for your consideration its full report.

After a careful study of the merits of the constitutional precept herein submitted, the Committee earnestly recommends that the same be adopted to control the force that in the long run may result in "our economic pauperism and our political extinction," to quote from your recent speech before the Rotary Club.

Respectfully submitted,

(Sgd.) SALVADOR ARANETA
Chairman
Committee on Commerce

The Hon. President
Constitutional Convention
Manila

EXPLANATORY NOTE

For the peace and prosperity of our country, and in order to achieve that economic stability essential to the continued and unimpaired enjoyment of our independence and sovereignty, it is necessary that the retail trade

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should be in the hands of our citizens.

Aliens now control this business

About 50% of our present retail trade is in the hands of Chinese; about 25% in the hands of Japanese. Less than 20% is in the hands of Filipinos, while the Americans have a very negligible share which does not amount to more than 2%.

Filipino retailers need legal protection;otherwise, they have no chance against their foreigncompetitors.

The reasons are as follows:

(a) The standard of living of some of the foreign competitors is very much lower than that of the Filipinos;

(b) They have very much greater business experience;

(c) Their present advantageous position has been in their command for so long already;

(d) They have now entrenched themselves behind an airtight system of financing and credit, cooperative purchasing, interlocking ownership, etc., so that a body of poorly organized or unorganized Filipino retailers cannot possibly compete fairly against them;

(e) They receive preferential treatments from big importers who are entirely foreigners, thereby enabling them to obtain merchandise at very much lower prices than the Filipinos can ever hope to obtain under the present circumstances.

Foreign retailers refuse to carry Philippine
products, (hereby impeding the country's industrial
development.

The universal complaint of our local producers is that some of our foreign retailers do not wish to handle local products, absolutely preferring imported articles from their own countries.

Precedents abound of countries setting retail
commerce apart and exclusively for their
nationals only.

At the outset, it will be well to note that in the absence of any treaty or law, there is no inherent riprht to carry on domestic trade (See Bogin S. Berchard, Diplomatic Protection of Citizens Abroad, p. 73, footnote 1.)

(a) In Roman Law, justly called the mother of laws, the alien merchant, had originally no protection or personality wheresoever.

(b) In England and in countries of the Middle Ages.

Aliens could not engage in business without legal permit. During the reign of Henry IV in England, foreign merchants were aliowed to deal only in wholesale trade, only natives being permitted to deal in retail. Under the law of 1439, Henry IV forbade foreign merchants even from trading among themselves. They were required to live in the house of an Englishman, who was to supervise their contracts; their stay in England for the transaction of business was limited to eight months; and they were required to apply the proceeds of their sales to the purchase of goods of the country for export.

In the middle of the fifteenth century, another statute (4 Edward IV C. 4) was sanctioned to protect the native merchant against Italian merchants, who were able to unite in the business of wool exportation. All these

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restrictions continued in force and effect until the reign of Queen Elizabeth, and if they are no longer in force now, it is only because the English merchants have already had ample opportunity to consolidate themselves and the evil remedied, so the law no longer has any reason to exist.

(c) In the European continent.

In Denmark and in Norway, aliens are allowed to engage in wholesale trade only; they are prohibited from trading in retail. In Sweden, the foreigner cannot do business without the authorization of the Governor of the Department; anil in Russia, naturalization or the authorization of the Chief of the Department is a requisite. (14) Diccionario España p. 520; The Commercial Laws of the World, Vol. 20, p. 29.)

(d) In the United States of America.

In the States of New York and Oregon, laws have been enacted prohibiting foreigners from engaging in the sale of refreshments and soft drinks, but while the courts of New York upheld the statutes, the Supreme Court of Oregon declared the measures unconstitutional. (Miller v. Niagara Falls, 207 App. Div. 798. Dragoser v. Gray, 73 yd. 250.)

The States of Massachussetts and Maine likewise have refused licenses of peddlers to aliens, with the difference that while the Supreme Court of Massachusetts upheld the law, the Supreme Court of Maine declared that there was no legal basis for discrimination against aliens in respect of the right to exercise that trade. (See Commonwealth v. Hanns, 1 195 Mass.)

Likewise, in New Jersey only citizens can engage in banking (laws of 1925, Ch., 189), and in the City of Seattle, Washington, an ordinance was approved prescribing citizenship as an essential prerequisite for license to engage in the pawnbroker's business. (Asakura v. Seattle, 265 U. S. 340). In South Dakota, only citizens are allowed to sell poisons. (Laws of 1929, Ch. 124.) In the States of Iowa, Oregon, West Virginia and Texas, only citizens can operate employment agencies (Iowa, Laws of 1929, Ch. 49; Oregon, Laws of 1929 Ch., 297; West Virginia, Laws of 1929, Ch. 12, Texas, Laws of 1929, 2nd Ex., Ch. 96), and the right to operate pool and billiard rooms is generally limited to citizens (Georgia, Laws of 1929, p. 285; See Clark v. Backebeck, 274 U.S. 302; Murphy v. California, 225 U.S. 6200.

In Virginia, only nationals may engage in the junk business (Laws of 1930, Ch. 436.) In New York and Wyoming, only citizens can deal in real estate business (New York. Laws of 1922. Ch. 673: amended bv Ch. 579, laws of 1924, Wyoming, Laws of 1929, Ch. 107). Pennsylvania even requires that in the case of corporations, associations or partnership, all the members actively engaged must be citizens. (Laws of 1931, No. 369.) And a recent act in New York requires citizenship for persons representing the self-insured under the Workmen's Compensation Law (Laws of 1923, Ch. 518, Ch. 749).

In various states, only citizens may engage in the following occupations: Barbers (Wisconsin, Laws of 1927, Ch. 195; Idaho, Laws of 1929, Ch. 261; Iowa, Laws of 1929, Ch. 72) : cosmetologists (Wisconsin, Laws of 1927, Ch. 130; Idaho, Laws of 1929, Ch. 264) ; bus drivers (Georgia, Order of Public Service Commission, Act. 1, 1929; Shide Island, Ordinance of Providence, Ch. 93, 1920) ; and private detectives (California, Laws of 1927, Ch. 835; Michigan, Laws of 1927, No. 383; Wisconsin, Laws of 1931, Ch. 52.

In the states of Oregon and Washington, there exist very stringent laws confining fishing privileges entirely to citizens only. British Columbia has also nationalized fishing, and the Congress of the United States — in legislating with respect to the territory of Alaska — has provided that aliens can fish with hook and line or by gaff or spear only, thus prohibiting them from fishing on a commercial scale. In California, Nevada, Arizona, Colorado, Delaware, Nebraska, Texas and Washington, either by constituted provisions or by legislation, the

ownership of real estate in some cases is limited to citizens; and in others, it is forbidden for aliens ineligible to American citizenship to have any interest in real estate.

And in innumerable states and countries, the practice of the profession of accountants, architects, auditors, engineers, physicians, dentists, optometrists and pharmacists, is limited to citizens only.

(f) Precedents right here in the Philippines

In our own laws, we have nationalized coastwise navigation; our public lands and our mineral resources are reserved exclusively for our nationals.

There is a pronounced sentiment on the part of many delegates insisting upon the nationalization of our public utilities. In this connection, it may be noted that the E spas a Encyclopedia has declared purchase and sale as the most important public utility; so, it is of more fundamental moment that retail business be in the hands of nationals than coastwise navigation and public utilities which we already nationalized, retail business having more direct and vital relation with our people.

(g) General comment

In the United States, for trade and occupations which affect the country's economic foundation far less vitally than retail commerce affects our economic life, legislation similar to the proposed constitutional precept has been generally adopted. And if other identical precedents do not exist in our country, other than those already noted above, it is because the evil of alien control of retail trade has no present parallel in any other country. As a high official of the Bureau of Commerce and Industry has aptly remarked: "The sari-sari stores are a unique institution in the Philippines. Because of their convenient location in the community and strategic position in the distribution system of the country, they form a vital factor in the economic life of the Filipino. They constitute the first trenches in the economic structure of the country."

This proposal is in harmony with contemporary
national practices of controlled economies.

It has been pointed out that this proposal is artificial, for it seeks to legislate on economic forces that will control; therefore the proper thing to do is to educate our people, capitalists and laymen, to exploit and patronize and thereby obtain command of our retail trade. This objection would hold good if we were still living in an age of free and untrammeled competition. All over the world now, the nations have been openly controlling by legislation the economic system within and even outside their own territories, controlling production, distribution prices, etc., leaving hardly any leeway to the free play of supply and demand so sacred to the regime of laissez faire. Besides, free competition presupposes equal terms between the composing units, which as we have already indicated above, do not exist for Filipino retailers. Not to give our retailers the protection suggested would be to allow foreign merchants to continue their ever-enlarging domination of our economic life.

The occupation of a retailer should be
considered a profession.

It has been said with much reason that commerce is the oldest of the occupations and the most modern of the professions. Here in the Philippines and in many other countries, the universities have courses in commerce similar to other academic studies. From the halls of our universities there emerge annually hundreds of graduates who are at a loss where to employ themselves afterwards. It is useless for our universities to consider commerce as a science and profession if our laws do not raise it to the category of an academic profession and its exercise placed on the same level with other professions reserved to citizens only. And just as the exercise of the

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profession of law or medicine requires academic prerequisites, so it is the paramount duty of the state to regulate the exercise of commerce, since the merchant can cause the nation more evils than could other professions. Mr. Dunham, Dean of the Harvard School of Business, elaborates on the importance and influence of the businessman in society in this manner:

"The development, strengthening and multiplication of socially-minded business men is the central problem of business. Moreover, it is one of the great problems of civilization, for such men can do more than any other type to rehabilitate the ethical and social forces of the community and to create the background which is essential to a more idealistic work in philosophy in the community. Unless more of our business leaders learn to exercise their powers and responsibilities with a definitely increased sense of responsibility toward other groups in the community ; unless without great lapse of time there can be, through the initiative, such an important socializing of business, our civilization may well head for one of its periods of decline. Certainly, unless such a development takes place, community problems arising out of business activities will present great and increasing difficulties."

The proposed constitutional precept does
not contravene the Independence Law.

The only restrictions contained in the said law that have any relation at all with this version are the sanctuary provisions that during the Commonwealth period, citizens and corporation of the United States shall enjoy in the Commonwealth all the civil rights of the citizens and corporations of our country, and that other provisions to the effect that even after the recognition of the independence of the Philippine Islands, the existing property rights of citizens or corporations of the United States shall be acknowledged, respected and guarded to the same extent as the property rights of citizens of the Philippine Islands.

The proposed constitutional precept treats citizens of the Philippine Islands and the United States in equal terms.

The safety clause precludes infringement upon
treaties of the United States

The provisions on the nationalization of retail commerce will not come in conflict with any existing commercial treaties between the United States and other countries. In the said treaty, the contracting nations have agreed to grant to the nationals of the other contracting parties ample opportunity to engage in commerce in their respective territories, and the word "territories" used in the said treaties may well embrace the Philippine Islands, The safety clause in the Constitutional precept is designed to meet this possible objection under which the fundamental law will apply to merchants who, by treaty, have the right to engage in retail commerce in the territories of the United States only upon the lapse of one year after the treaty has ceased to be operative on the Philippine Islands. After independence shall have been duly declared under the terms of the Tydings-McDuffie Law, United States treaties shall cease to apply to the Islands. Hence, the period of grace will be counted, as regards all treaties that have not ceased to be operative before the declaration of the said independence, from the time of the said declaration.

The proposed provisions must be embodied
in the Constitution

An ordinary legislation is not enough. If we adopt, as the Convention is sure to do, the American principles of "due process of law" and "equal protection before the law," an ordinary statute enacting the above proposal could be declared unconstitutional for contravening these Constitutional principles, for on their strength the Supreme Court of the United States has ruled as follows:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says, 'Nor shall any State deprive any person's life, liberty or property without due process of law; nor deny to any person within

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its jurisdiction the equal protection of the laws.' These provisions are universal in their jurisdiction, without regard to any difference of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." (Yick v. Hopkens, 118, C. S. 369.)

This is the propitious time to legislate
on this question.

This measure can be enacted only today while we are still protected by the American flag. If this problem is solved now with the cooperation of the Government of the United States, we shall be in the best possible position to preserve the Philippines for the Filipinos. For obvious reasons, the Philippine Government will find it extremely difficult, if not impossible, to pass such a measure after the declaration of complete independence. It is necessary right now to define ciearly and fully the activities in which the aliens will be well received, distinguishing those from other activities which, being essential to the stability of our institutions and the maintenance of the integrity of the national patrimony, it is our wish that they be exclusively for our people.

The constitutional precept is a matter of
pure national self-preservation without any
anti-foreign color whatsoever.

The constitutional precept does not evince in any way any anti-foreign sentiment, but simply a natural and just desire of our people to reserve for themselves what in other countries is the patrimony of their nationals.

Moreover, it will be noticed that fairness for the alien retailer is uppermost in the proposed constitutional precept. He is given five years after the inauguration of the Commonwealth Government within which to liquidate his business. This period, it is submitted, is more than sufficient and ampie for him to liquidate his business without losing the price that he could obtain in an ordinary sale of whatever merchandise he might have in store at the time of the inauguration of the Commonwealth.

General Conclusion

For the foregoing reasons, your Committee, anxious for the peace, prosperity and stability of the life, independence and unimpaired sovereignty of the Filipino people once the same is fully achieved, recommends to the honorable members of the Constitutional Convention that the foregoing proposal be embodied in the Constitution, so that, in the words of the President of this Convention, we guarantee for the people of these Islands the integrity of the national patrimony.

Manila, September 15, 1934.

Respectfully submitted,

(Sgd.) SALVADOR ARANETA
Chairman
Committee on Commerce

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