

## THE PARITY AMENDMENT AND VESTED INTERESTS

The amendment to the Constitution of the Philippines giving American citizens and corporations the same rights as those granted by the Constitution to Filipinos over the nation's natural resources and the ownership and operation of public utilities began in 1947 and will end on July 3, 1974. The time between these dates may indicate the period when such rights shall be acquired and ended or it may refer only to the time such rights should be acquired. If it refers simply to the time of the acquisition of the rights under discussion, it is possible, if not altogether certain, that once acquired they will remain in existence even after the stated date as long as they do not change hands. This condition is what some people consider as creating vested rights.

If, on the other hand, the time between the two dates refers to the period within which the acquisition and enjoyment of the rights shall take place, then the occurrence of July 3, 1974, will have the effect of ending both the possession and exercise of the rights acquired before that date. No American, in this second case, may therefore lawfully claim continuance of the rights he has acquired before that date on the theory of acquired vested rights.

The question then that arises is: Which of these two alternatives was contemplated by the Amendment? The Amendment does not expressly state which one. This being the case, we need to look into the purpose and reason of the Amendment or to resort to analogous cases or similar situations

found in the Constitution and to legal principles generally accepted in both countries, the United States and the Philippines.

But before going further, it seems pertinent to determine the nature of what is understood as vested rights. The legal meaning of this term is stated in Webster's New International Dictionary (2nd ed.) which is: A right "that has become a complete and consummated right; that has taken effect as an immediate right to present or future enjoyment."

One may ask if it was the intention of the Philippine Congress that approved the proposal of the so-called Parity Amendment and of the people who ratified it as part of the Constitution to give these extraordinary rights the quality of permanency once acquired during the period from March 11, 1947, to July 3, 1974. If so then those rights become vested rights to be enjoyed not only during that period but for all the years following July 3, 1974. The intention of the Congress acting as a constituent assembly in this case and of the Filipino people approving or ratifying the amendment, particularly the latter, are the controlling factors that serve as guides in determining the Amendment's meaning and scope. No other party, government, or state has any right and business to insist that its voice be given superior authority in the solution of this particular problem.

The concession of the so-called Parity rights to aliens (in this case the Americans) was no more than an act of forced generosity exacted by a strong government from a people helpless and prostrate after over three years of enemy occupation — a people under an administration so weak that it readily agreed to surrender the sovereign authority of the Republic over the nation's Constitution because it was not willing to suffer standing on its own feet.

The Amendment was naturally and readily accepted by the American government without any condition other than the payment of a sum of money which that government deemed sufficient to enable Filipinos to rebuild some homes and factories destroyed principally by its armed forces and to redeem the lost prestige of the United States in Asia. That is the reason and purpose of the Parity Amendment. Professor Frank H. Golay of Cornell University referred to this amendment and the Philippine Trade Act as "blatant infringements on Philippine sovereignty." And he added that the impact of American investments the Parity Amendment was expected to generate failed to materialize. He wrote this in 1961.

The absurdity and unfairness of an interpretation that reads into rights acquired under the Amendment the character of vested rights becomes obvious when we consider that under it the acquisition of natural resources or franchises by American citizens one day or one week before July 3, 1974, may become a vested right. As a matter of fact, the vested rights theory may start at this late hour — eight years before July 3, 1974 — the filing of many applications for ownership of public land and other natural resources. If on the other hand, this theory is not upheld — as it surely should not be upheld — then some one will have to stand accused of misleading Americans into investing funds which they could have used for other purposes. Furthermore, the resulting situation may give rise to unnecessary misunderstandings between two good friends. This must, of course, be avoided.

Let it not be forgotten that the so-called Parity Amendment is part of the Constitution and as such must be expected to follow the expression of other parts of that document affecting the maintenance of rights acquired before the occurrence of certain

events. To illustrate this point, the following provisions of Article XIII, parts of Sections 1 and 3, are here reproduced as follows:

"Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, *subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.*"

"Section 3. The Congress of the Philippines may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, *subject to rights existing prior to the enactment of such law.*"

The terms of the Parity Amendment do not include a reservation of rights acquired under it before July 3, 1974. The amendment is completely silent on this subject.

When Section 1 of Article XIII, as reproduced above, declares that the disposition, exploitation, development or utilization of all lands of the public domain and all other natural resources as the exclusive property of the state and that their use or enjoyment shall be limited to Philippine citizens and corporations, it expressly states that these provisions on these subjects shall be "*subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution.*" These words express a recognition of rights vested before the effectivity of the Constitution and existing before the date of the inauguration of the new Government.

Again when Section 3 of Article XIII authorizes Congress to determine by law the size of private agricultural land for individuals and corporations, it expressly adds "*subject to rights existing prior to the enactment of such law.*" This simply signifies that Congress may not change the size of private agricultural land as it existed before the passage of any law on the subject. This again shows that the recognition of vested rights must be expressed, not implied.

But there are other difficulties that need to be overcome by the proponents of vested rights. They are raised by the following questions: Is the principle of vested rights applicable in the relation between the state and private parties in the absence of any concession by the former? May private persons bind the state to respect their claim to property belonging to the state such as lands of the public domain and natural resources? These queries call for a negative answer, otherwise prescription against the state may be claimed. But this is not legally permissible. And vested rights have fundamentally similar effects as prescriptive rights.

The rights granted to Americans by the Parity Amendment have a time limit. To continue the exploitation and utilization after the deadline of July 3, 1974, will be to ignore this limit. To consider these rights as vested ones is to change the plain intention of the law. It is to claim the operation of acquisitive prescription on the basis of their enjoyment for various periods of time from one day to 28 years. It would also amount to a unilateral decision on renewal of rights after the date of their expiration as originally agreed upon by the parties concerned. Any attempt in favor of such stand would be absurd and unfair for it could only be based on an erroneous conception of the scope of the Amendment extracted from a weak people who

were made to part with a portion of their sovereign rights and, consequently, their self-respect in their time of need. More than that, it would amount to a revival of colonialism, a condition which the American government has consistently claimed as abhorrent to its ideals and principles. — *By V. G. Sinco*

### **PRESIDENT MARCOS ON CONSTITUTIONAL AMENDMENTS**

In his address before the Philconsa on May 14, 1966, President Marcos expressed himself in favor of a Constitutional convention to amend or revise the present Constitution. He said that the process of changing a constitution is more technical than political and so the choice of delegates should be on a non-partisan basis. President Marcos is right. It is therefore obvious that the delegates to the constitutional convention should have the technical qualifications to do the work of revising so important a document. The technical skill is not meant to be mere knowledge of our Constitution and constitutional law of the superficial and uncritical kind. It is not confined to legal knowledge but should include a good acquaintance with the political behavior, the social attitudes, and the educational and economic problems of the Filipino nation. For the constitution is not just a purely legal plan: it is also a political, social, and economic charter of a basic character. — *V. G. S.*