

CHAPTER XIV

AN ANOMALOUS GOVERNMENT

American unfamiliarity with the constitutional status of the Philippines is well illustrated by the surprise with which many learn that the Prohibition Amendment has no force whatsoever in the Archipelago. Neither has any other amendment, nor the original body of the Constitution, except in so far as parts of it may have been specifically legislated for the Philippines. Constitutionally the Philippines are not a part of the United States. Yet they are American territory and other nations cannot deal with them as a separate government. As has been said: "The Government of the Philippine Islands is a government foreign to the United States for domestic purposes, but domestic for foreign purposes."¹ Filipinos are not American citizens, but owe allegiance to, and are under the protection of, the United States.

Since the Philippines are subject to the United States, but without the guarantees of the American Constitution, it follows that the power of Congress over the Islands is absolute. At any time, by a mere majority vote in both Houses followed by the customary Presidential approval, our Congress can completely alter the basic law and political status of the Islands. "Congress," as one of the leading Filipino authorities on constitutional law has written, "can keep the Philippines in perpetual dependency, convert it into a State of the

¹ Quoted by KALAW: "The Present Government of the Philippines," p. 112.

Union, or declare it free and independent.”¹ The record shows that our Federal Legislature has so far been scrupulously careful to exercise this enormous power over an alien people cautiously. But the fear of what Congress may do—a fear which is quite comprehensible in view of the general ignorance of our Senators and Representatives on Philippine sentiments and conditions—is a constant source of anxiety to the educated islanders. Much of the energy of the so-called “Independence Mission” in Washington is occupied with combating ill-judged bills on Philippine matters. Such legislation, of course, can at any time be introduced at the behest of interested American groups.

There is something patently un-American in our failure to give any constitutional guarantees or safeguards to the people of the Philippines. The advertised autonomy of the Islands cannot be regarded as very real when one remembers the unlimited power which Congress reserves to undo at a stroke the accomplishments of the Philippine Legislature. The Jones Law stipulates (Section 19) that “all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same.” The Insular Legislature itself could, it appears, be wiped out of existence if the President of the United States and a bare majority of Congress felt at any time that such a reactionary step was desirable. Nominally autonomous, the Philippine Islands have in reality much less-guaranteed self-government than an American state. They have not even a vote in this Congress which is a sword of Damocles above their heads, for the Resident Commissioners chosen by the Insular Legislature can speak, but cannot participate in a division on the floor of the House of Representatives.

¹ MAXIMO M. KALAW, *op. cit.*, p. 113.

Historically, it would appear that the reason for the absence of any constitutional status for the Philippines is our oft-reiterated pledge to give them complete independence. Permanent guarantees would have been superfluous for the temporary American administration which was designed. And that the design was for purely temporary American control there is not the faintest shadow of doubt, the only issue originally being as to the length of time for which that control should be exercised. The advocates of independence are able to quote numerous statements of acceptance in that end by Presidents McKinley, Roosevelt, Taft, and Wilson, which is perhaps not quite fair unless certain qualifying observations (fully quoted in their turn by advocates of retention) are included. Moreover, expressions of executive opinion, as Europe has come to realize since the Treaty of Versailles, are in no way legally binding on the United States.

The preamble to the Jones Law, passed by both Houses of Congress in 1916 and approved by President Wilson on August 29 of that year, may, however, be legitimately regarded as the definite pledge of the American people on the subject. That preamble, following a title which defines the law as, "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," reads as follows:

Whereas it was never the intention of the people of the United States in the incipency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them

without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared fully to assume the responsibilities and enjoy all the privileges of complete independence: Therefore

Be it enacted, . . . etc.

At the present time it is being argued, in a way unpleasantly reminiscent of the famous "scrap of paper" incident, that the preamble of a law is not a part of that law, and has, in consequence, no legal force. Even though true, the technicality is not wholly effective. The issue is one in which Philippine opinion ought to be consulted as much as American. To the Filipinos the Jones Law is more than an organic act establishing a semi-autonomous government in the Islands. It is regarded as a Treaty in which the Title and Preamble, deliberately set down and passed by Congress, are as important as what follows. And, so the dangerous argument may now be heard, if the preamble to the Jones Law is not binding on America, neither are certain provisos of that law necessarily binding on us. The reference, generally, is to that part of Section 22 of the Act which states specifically that: "All executive functions of the government (of the Philippine Islands) must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General."

It is at this point that—entirely regardless of the independence issue—the Jones Law breaks down as a permanent instrument of government. This organic law provided for the establishment of a Legislature, composed of a House of Representatives with ninety-one members and a Senate with twenty-four members.¹ It

¹ Nine members of the House and two Senators, all from the non-Christian districts, are appointed by the Governor-General. The remainder are elected under manhood suffrage.

authorized improvement in the executive side of government so that there were subsequently established six departments,¹ with subordinate bureaus, corresponding to the principal domestic purposes of a modern nation. But it failed to settle in any clear-cut way the basic issue of the responsibility of the department heads. The secretaries were at one and the same time made subject to the influence of the native Legislature, and told that in their executive functions they were completely subordinate to the control of the American Governor-General.

Most obviously such a system could only work well as long as there was complete harmony between Legislature and Governor-General. There was such harmony under Francis Burton Harrison, Governor-General from 1913 to 1921. There has been anything but such harmony under the régime of Major-General Leonard Wood, Governor-General since 1921. The reason for this difference is not primarily a matter of individual personality, mistakes, or virtues. It lies primarily in the fact that Harrison did his utmost to forward the Filipino claim to control over the executive, which Wood has as persistently blocked. The former sought to reduce the practical values of his office in favor of the ceremonial, conceiving this to accord with the spirit of the Jones Law. The latter has refused to abdicate any part of the functions which the letter of the Jones Law entrusts to him. Shrewd observers will see in the contrast between the two administrations, each of them quite defensible under the organic Act, a proof that this Act will not serve much longer as the basis of Philippine government.

Indeed, the unsettled constitutional status of the Philippines must be appreciated before justifiable criticism

¹Interior, Public Instruction, Finance, Justice, Agriculture and Natural Resources, Commerce and Communications.

of American administrative methods out there can be passed. The very rapid Filipinization of the islands under the Harrison régime was bound to make the task of the present Governor-General a thankless one. Judging purely by the policy followed during President Wilson's two terms of office, the most logical action for Mr. Harrison's successor would have been to pull down the American flag and pack up. "Reactionary" is after all a relative word, and it is well to realize that General Wood is reactionary to the Filipinos not so much because he pulls backward, as because he gives a conservative rather than a liberal interpretation in all the vexed cases where varying interpretations of the Jones Law are legitimate.

Illustrative of the point is Governor-General Wood's frequent use of the veto power, which was exercised by Governor-General Harrison just five times during the five years of his stay after the passage of the Jones Law. General Wood has no scruples about employing his veto power lavishly,¹ even in matters of purely domestic concern, but maintains that he has never used it without the most complete confidence that his action was justified. And it does seem significant that while the Philippine Legislature can by a two-thirds vote send a vetoed bill directly to the President of the United States for decision, such action was taken with only one measure out of all those blocked by Governor Wood up to the 1926 session of the Legislature. Shortly after the convening of the 1926 session, however, a resolution calling for a plebiscite on the independence issue was promptly repassed by both houses of the Legislature after veto by the Governor-General as outside legislative authority.

¹ General Wood vetoed twenty-one bills in the first two sessions of the Legislature under his administration. In the 1925 session the proportion was approximately one bill vetoed out of every three sent to him for signature.

This issue of the exercise of veto power is really a fundamental in the whole Philippine problem. When the Governor-General vetoes a bill which may, even remotely, affect legitimate American interests he in no way contravenes the spirit of the Jones Law. But when he vetoes measures of purely domestic concern, as in the recent effort to revise the divorce laws of the islands, he makes himself a predominant part of the Philippine legislative machinery in a way which certainly seems inconsistent with the degree of autonomy the Philippines theoretically possess. It has been Governor-General Wood's viewpoint that the Filipinos are only potentially, not yet actually, capable of self-government and that he is, therefore, completely justified in blocking their legislative course at any point where his reason tells them they are in shoal water. It is the Filipino viewpoint that whether their elected representatives always show impeccable wisdom in purely domestic matters is none of the Governor-General's business. Feeling in this issue has become very bitter, and will become increasingly so until the constitutional uncertainty which surrounds it is clarified by the American Congress.

It may be stated without qualification that the Filipino people will never be a satisfied and contented community within the American Empire until they are given real home rule. And the form of home rule must be based upon the English system of cabinet responsibility to the legislature rather than the American system of divided authority. The racial difficulty plays its part in deciding this choice, for the Filipinos will consider themselves a subject people as long as an American Governor-General is allowed to hold the whip hand over a native legislature. But rational political theory which has not failed to notice the grave defects arising from



SENATE PRESIDENT QUEZON

The brilliant leader of the Independence Movement relaxes on ship-board during an inter-island propaganda trip.



MRS. ROSA SEVILLA DE ALVERO

The president of a girls' seminary in Manila who urges her countrywomen to work peacefully but ceaselessly for independence.



our separation of governmental powers¹ plays a more important rôle.

Moreover, the parliamentary system of cabinet responsibility, now nearly universal among all nations with democratic government except the United States, is rooted in Philippine political tradition. The Malolos Constitution of the short-lived Philippine Republic provided for an outright parliamentary system of government. The Philippine Commission, which governed the islands from 1901 to 1916, combined executive and legislative functions. The fact that the present system does not adequately harmonize with the trend of native political thought was mainly responsible for the creation of the Council of State during the Harrison régime, on which the President of the Senate and Speaker of the House as well as Department secretaries were represented. The present Supreme National Council is another instance of the ceaseless effort to reduce the authority of the executive, failing constitutional provisions to make him responsible to the Legislature. Just as the English parliamentarians of the past worked ceaselessly to limit the authority of the king and make him a largely ceremonial figure, so will the Filipino spokesmen work to contravene dictatorial powers of the Governor-General until such time as answer is given to their plea for an executive responsible to the people through the agency of a duly elected Legislature.

When this constitutional situation is understood, and not concealed by stupid attempts to stigmatize the native leaders as "politicians"—absurd when we recall that it is our own "politicians" who in the last analysis have

¹Bryce, in his "American Commonwealth"; Beard, in his "American Government"; Ford in his "Rise and Growth of American Politics," and a host of other authorities have commented at length on the problems arising from our balance of power between executive and legislature.

absolute power over the Islands—it becomes desirable to analyze the various alternatives which lie open.

The first possibility is continuation of the *status quo*, the chief argument in favor of which is that the Jones Law has on the whole worked well during its ten years of operation. As opposed to this, however, is the fact that the present organic law is admittedly an *ad interim* measure, which will not serve indefinitely as the instrument of Philippine government. It has served its experimental purpose, and sooner or later must be improved upon in the light of experience. Knowledge by both Americans and Filipinos that the change must come is probably doing more to retard the economic development of the islands than would be the case if outright independence were granted.

There is, in the second place, the possibility of giving the Philippines a territorial status, similar to that of Hawaii or Alaska, a course strongly advocated by certain business interests because it would take from the natives virtually all control over their own affairs. Such a "solution" would be so diametrically opposed to all our pledges with reference to the Philippines, so certain to create an enduring and righteous hatred of America among all patriotic Filipinos, that it is almost incredible to find the course quite widely supported. While it is unlikely that American public opinion would ever subscribe to such a betrayal, the fact that it can be seriously considered helps to illustrate how crucial the Philippine problem has become.

A third possibility is to give the Islands the status of an American state, perhaps with certain qualifications such as freedom from the operation of the Federal Income Tax, or military conscription in time of war. There is certainly more to be said for this scheme than for that of territorial status, and early in the century it was advocated by the Philippine Federal party. That party

disappeared, however, when it could find supporters neither in the Islands nor in the United States. One of the many difficulties behind this possible solution is found in the problem of congressional representation. The population of the Philippines is as great as that of the state of New York, and increasing at least as fast. What would be the effect on our politics and public opinion (both white and colored) if a body of fifty brown-skinned legislators were given full powers in the House of Representatives?

Then there is the possibility of complete and untrammelled independence. That if this were granted the Filipinos would run their government at least as efficiently and as capably as is the case with the majority of Latin-American Republics is not open to serious doubt. That their continued independence, if not already assured, could be guaranteed by treaties of neutrality between the powers interested in the Far East is certain. By the fair minded effort to make it appear that Japan would seize the islands if we left them must be regarded as in large part propaganda which, consciously or unconsciously, serves to obscure the real issues. The tropical climate of the islands is an absolute bar to Japanese colonization. Japanese economic penetration, as shown elsewhere in this book, is directed in an entirely different direction.¹ And the balance of power in the East would not permit Great Britain to sit idly by if Japan made any move of aggression against an independent Philippines.

The real argument against Philippine independence is not the chance that the natives would not be able to maintain it if granted, but the abundant evidence that essential Philippine desires and essential American interests can be harmonized without as yet attempting so drastic a solution. Opposition to independence may

¹See Chap. V.

further be quite legitimately supported by the thesis that if the Islands obtained political freedom they would soon become economically subservient to some more business-like race; and by the argument that the problem of pagan minorities, while becoming less important every year, would still prove a grave difficulty for a fledgling republic. Most of the other points raised in opposition are based on biased self-interest rather than dispassionate facts.

There remains the possibility of Philippine autonomy under American sovereignty, a status which may be defined as Dominion Home Rule, because in all essentials akin to that enjoyed by Canada, Australia, New Zealand, and South Africa within the British Empire.¹ Under this arrangement an American Governor-General would continue in office at Manila, but his powers would be supervisory rather than executive. The Filipinos would exercise their own executive authority in all domestic affairs through the agency of a Premier (or President, if they preferred that title) who with his Cabinet would be responsible to the Philippine Legislature. The American Governor-General would have more than ceremonial functions to attend to, for the United States would retain complete direction of the foreign policy of the Philippines. For that reason the Governor-General's veto power over Legislative acts would continue, but with the vital distinction that it could be exercised only against insular legislation legally definable as non-domestic. In specific controversies on debatable ground here it would seem that the United States Supreme Court, rather than the President of the United States as at present, should serve as arbiter for an overridden veto.

¹ An excellent source book on Dominion Home Rule is provided by H. E. EGERTON'S "Federations and Unions in the British Empire."

In addition to reserving to the United States complete direction of Philippine foreign policy, and a limited veto power, the proposed arrangement would provide for the continuation of American military and naval bases; for a perpetuation of the present customs union insuring permanent free trade between the United States and the Islands; and for special American jurisdiction for a limited period over the non-Christian tribes. As has been stated, the Moro problem is one which is being automatically solved, in the main peacefully, by the steady Filipinization of the Mohammedan districts. For this reason any such legislation as the ill-judged Bacon bill,¹ aiming to create a permanently separate American-dictated administration in the southern (rubber-growing) provinces should be dismissed. An ironic commentary on the alleged high purposes of this measure was provided when Carmi A. Thompson, personal representative of President Coolidge, visited Mindanao in August, 1926. To quote *The New York Times* of August 24:

Some of the Datus (Moro chiefs) spoke against the Bacon bill and none for it. Sultan Rambin said, "Mindanao will fight and die rather than be separated from the Philippines." He added that the religious differences between the Moros and the Christian Filipinos had been exaggerated and were diminishing.

This viewpoint must not be taken as typical, for the Datus who favor American as against Filipino rule are in the majority. But as the real desire of most of these primitive, not to say savage, tribesmen is to oppose any civilizing tendency, the Bacon bill cannot be regarded as according with their wishes. American supervision in the domestic affairs of most of Mindanao, however, is unquestionably more desirable than in the other islands.

Perfection is not claimed for the Dominion Home Rule

¹Introduced in the House, June 11, 1926, by Representative Bacon of New York.

solution of the Philippine problem, but it is the writer's firm conviction that to all concerned it offers more advantages and fewer disadvantages than any other plan as yet brought forward. It would keep the American flag, and all beneficial American influences, in the islands. It would provide certainty instead of the present uncertainty for all legitimate and honorable business enterprise. It would give the Filipinos that command over their own affairs which is the just ambition of this peaceful, law-abiding, and lovable Christian people. It is in accord both with our public protestations and our past policies in the development of Philippine self-government. It would harmonize with the natural tread of the highly intelligent Filipino political thought, and it would at the present time be a solution entirely agreeable to a great majority of the people of the Islands and their leaders. Only an Act of Congress, improving and rectifying the Jones Law in the light of a decade's experience with its shortcomings, would be necessary to initiate the new régime.

The danger in the situation is that the present opportunity to secure a solution of the Philippine problem, permanently giving the United States more authority and privilege than we have in Cuba, may well be transient. No accurate parallel with the Irish difficulty as it developed for Great Britain can here be drawn. But there is much which Americans can learn from a consideration of the Irish settlement which would have been welcomed in 1890, and that which was made after so much bloodshed and bitterness a generation later. The Filipinos have before them clear-cut evidence that the Coolidge Administration seeks to curtail such autonomy as has been granted to them. There is Mr. Coolidge's suggestion to Congress that "more authority should be given to the Governor-General." There is the Kiess bill (H. R. 10,940) to confer upon the American auditor for

the Philippines powers greater than those possessed by our own Comptroller General. There is the second Kiess bill (H. R. 11,490) to provide the American Governor-General with special funds over which the Legislature shall have no control—a bill, said to have been suggested by General Wood, which strikes at the basic democratic principle of public control over the executive purse. There is the Bacon bill (H. R. 12,772) already referred to, which would detach a huge area of the most valuable Philippine territory from any semblance of popular control to open it for unhampered American exploitation. And there is the active campaign for curtailing Philippine self-government now carried on by the New York *Herald-Tribune* and other powerful administration newspapers.

Faced with many indications of a reactionary trend in the Philippine policy of the United States, it is small wonder that the Filipino position has hardened as ours has hardened; that the campaign for complete and untrammelled independence is being actively and successfully pushed to offset the American campaign for a reduction of native liberties. Soon, very soon, as the tides are flowing, the old American relationship of friendly guardian to the Philippines will have gone for good. It will be the guns of our warships and the superior equipment of our soldiers which will keep the Stars and Stripes flying above an embittered subject race.