

of fact, and not as a mere subterfuge for exercising the power, then in the light of the decisions of the Supreme Court above cited, sustaining the jurisdiction of the treaty-making power over some of the so-called reserved powers, it is difficult to assign any reasonable ground for denying it jurisdiction over the other so-called reserved powers in the cases suggested. It has already been argued that inasmuch as the reserved powers all stand on the same footing in their relation to the treaty-making power, and in view of the terms of the provision making such reservation of powers, the right to exercise jurisdiction over any of them implies the right to exercise jurisdiction over them all. The question of the police powers was left open as a possible exception, but no well-defined distinction can be drawn between the police powers and the other so-called reserved powers in relation to the treaty-making power, and no conclusive reason appears for making an exception of them in this connection.

In conclusion, the report found that—

In the light of these opinions it cannot well be denied that the treaty-making power is a *national* rather than a *federal* power, and this distinction measures the whole difference between its jurisdiction and the jurisdiction of Congress in relation of the so-called reserved powers.

In view of the foregoing considerations, it is evident that in order to make use of the treaty-making power as an agency for domestic legislation, a number of conditions and limitations will be encountered which materially limit the scope of that method of legislation. A useful field is thus offered for further examination and discussion of the subject of to what extent and within what limits domestic legislation can be accomplished through the exercise of the treaty-making power.

In connection with this subject there are two other questions which require consideration.

One question of interest is, What is the status of domestic legislation enacted by Congress on the authority of a treaty extending its jurisdiction when the treaty justifying such legislation is terminated?

The other question is, What can be accomplished in the way of domestic legislation by inter-state agreements sanctioned by Congress in accordance with the provisions of Article I, Section 10, of the Constitution?

CHANDLER P. ANDERSON

#### THE CONSTITUTION OF THE PHILIPPINES

On May 14, the qualified electors in the Philippines accepted by an overwhelming vote the constitution submitted to them as drafted by the Philippine Constitutional Convention and approved by President Roosevelt as being within the terms of the Tydings-MacDuffie Act.<sup>1</sup> The total vote cast was strangely small (barely fifty per cent. of the qualified electors voting), considering the importance of the matter and the large percentages of par-

<sup>1</sup> Statutes of Congress, 73rd Cong., 2nd Sess., Chap. 84 (Session Laws, 1934, I, 456).

ticipating voters in elections to the Philippine Assembly. For the first time in the history of the Philippines, women were allowed to vote, and it would appear that more than one-third of the votes in the plebiscite were cast by women. The result, therefore, does not show the extent to which the peoples of the Philippines desire independence, but that there was no considerable opposition to independence is manifest.

Under the Tydings-MacDuffie Act, a period of ten years of commonwealth-status was provided for, at the expiration of which full and complete independence is granted. The Constitutional Convention, elected under the terms of the Act, sat from early in October until the latter part of February, when it adopted a draft which was submitted to President Roosevelt for his approval. A preliminary draft was prepared by a sub-committee of nine between October 9 and 20, and this was ultimately adopted by the convention without substantial change. Its contents are derived, both in substance and in form, in very large measure, from the federal and state constitutions of the United States. The plan is for a unitary form of the presidential-congressional type, with a unicameral legislative assembly having large powers.

For the present purpose, comment must be limited to those features which have to do with foreign affairs. The constitution repeats the provisions of the Tydings-MacDuffie Act governing the period of the Commonwealth. During that decade foreign affairs are to be under the direct supervision and control of the United States. No loans are to be contracted elsewhere than in the Philippines or in the United States without the approval of the latter. All legislative acts affecting currency, coinage, imports, exports, and immigration must be approved by the President. All of the military forces of the Philippines may be called into the service of the United States, which continues to have the right to maintain its military and naval reservations and forces there.

The form of government proposed in the constitution is to come into existence with the inauguration of the Commonwealth and to remain unchanged with the era of independence. The powers of government, however, are naturally enlarged with the assumption of independence, especially the executive power. As in the United States, the president will appoint ambassadors, other public ministers and consuls, subject to confirmation by a commission composed of twenty-one members of the legislative assembly. The president, likewise, is to "receive" ambassadors and public ministers. Treaty-making is in the hands of the president, "with the concurrence of a majority of all the members of the national assembly." While no explicit statement is made that treaties are to be the supreme law of the land, such is evidently the intention, as they, like statutes, are to be subject to judicial review. Article VIII, Section 10, provides that "no treaty or law (*sic*) may be declared unconstitutional without the concurrence of two-thirds of all" the eleven members of the Supreme Court of the Philippines. Following

the example of Spain, the Philippine Constitution adopts a portion of the Kellogg-Briand Pact and renounces war as an instrument of national policy. Likewise, following Spain, as well as Estonia, Latvia, Germany, and Austria, the Philippines adopt "the generally accepted principles of international law as a part of the law of the nation." What such provisions amount to by way of limitations upon government, under a constitution prepared upon the American theory of constitutional limitations, is difficult to foretell. In the European constitutions which contain these provisions, the limitations are generally political rather than legal, and hence they may be regarded as counsels of perfection which do not actually limit government otherwise than by popular control.

While the United States, under the Tydings-MacDuffie Act, may intervene during the Commonwealth for the preservation of government under the constitution, no such right analogous to the Platt Amendment will survive into the era of independence. Then the United States, so the Congressional Act declares, shall "withdraw and surrender all right of possession, supervision, jurisdiction, control or sovereignty" in and over the Philippines. American naval stations and reservations are excepted, but no promise is made to the Philippines of their defense. What the future naval policy of the United States will be, as regards the Philippines, remains to be seen. Much will depend upon what, if anything, will be done along the line of the recommendation of the Tydings-MacDuffie Act, which requests the President of the United States, *at the earliest practicable date*, to enter into negotiations with foreign Powers with a view to the conclusion of a treaty "for the perpetual neutralization of the Philippine Islands if and when independence shall have been achieved." Clearly, if this be attempted, a complete re-shaping of American policy in the Far East may be indicated. Certainly there should be an immediate re-appraisal of American interests in that quarter of the world, in the light of the various factors involved in our renunciation of a major responsibility in the Pacific.

The Philippine constitution now having been adopted, elections under it are to be held shortly and it is expected that the government of the Commonwealth will be inaugurated, possibly by October 15 next, and certainly by January 1, 1936, at the latest. By January 1, 1946, therefore, the Republic of the Philippines will come into existence as a fully independent state. In the meantime, it will have in effect dominion status, fully self-governing, the sole civil representative of the United States being a Resident High Commissioner, whose duties are to be supervisory rather than executive—mere shadows compared with the present pro-consular powers of the Governor General.

J. S. REEVES