

THE SPANISH ROOTS OF PHILIPPINE LAW*

Las raíces españolas del Derecho filipino

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Resumen

A principios del siglo XVI un barco español capitaneado por Magallanes desembarca en lo que hoy en día se conoce como las Islas de Filipinas. Desde el año 1565 al 1898 España mantuvo su soberanía en el territorio. Hasta entonces, las islas eran administradas desde la Ciudad de México y controladas a través del puerto de Acapulco. Durante este periodo, las Islas de Filipinas se regían por la normativa española: las Partidas, la Novísima Recopilación y la recopilación de las Leyes de Indias. El órgano supremo era la Royal Audiencia, que más tarde se dividió en dos salas: Sala de lo Civil y Sala de lo Penal. Antes de la lograr la independencia, se implantaron en las Islas el Código Penal en 1887 y el Código de Comercio y el Código Civil en 1889. Estos tres códigos han influido enormemente el Derecho vigente actualmente en Filipinas.

Palabras clave

Filipinas; influencia normativa española; derecho filipino.

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Abstract

At the beginning of the 16th century, a Spanish shift captained by Magallanes disembarked in what is today referred to as the Philippines Islands. From 1565 to 1898 Spain maintained her sovereignty over the territory. Until then, the islands were administered from Mexico City and controlled through the port of Acapulco. During this time, the Philippines Islands were governed by the Spanish normative: the *Partidas*, the *Novísima Recopilación* and the *racopilación de las Leyes de Indias*. The supreme judicial body was the *Royal Audiencia*, which was later divided into two divisions: *Sala de lo Civil* and *Sala de lo Penal*. Before gaining independence, the *Código Penal* (1887), the *Código de Comercio* (1889) and the *Código Civil* (1889) were introduced in the islands. These three codes have greatly influenced the applicable law nowadays in Philippines.

Keywords

The Philippines; influence; Spanish normative; Philippines law.

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I. THE MAGELLANIC EXPEDITION

In March 1521, three ships flying the Spanish flag, made landfall on a small island in the Philippine Archipelago, on the southeastern fringe of the great continent of Asia. They had sailed from the port of Sanlúcar de Barrameda one-and-a-half years earlier, on 20 September 1519, having made their way from Seville down the grand Guadalquivir.

Actually, five ships had set out on the journey from Sanlúcar, but two were lost along the way: one to shipwreck, and another to desertion, on the southern tip of the South American continent.

The commander of the expedition was Portuguese by birth, Spanish by naturalization: Fernão de Magalhaes. His commission: to exploit the spice treasures of the Indies and to colonize whatever lands might be discovered in the region of the Moluccas.

Magellan might have colonized the archipelago which he named *Islas de San Lázaro* but he overplayed his hand and made serious mis-calculations. As a result, he ended up a corpse on the shore of one of the archipelago's tiny islands. He died on 27 April 1521, barely a month-and-a-half after he came ashore. Neither his plan of conquest nor the name he had given to the islands outlived him.

Of the five ships that left the harbor of Sanlúcar de Barrameda on that September day of 1519, only one made it back to its port of origin, dropping anchor there on 6 September 1522. The ship *Victoria* carried 18 of the 265 men who had started on the voyage. She had achieved a historic feat: the circumnavigation of the globe.

But if Magellan's personal dreams perished with him, the dream of a Spanish empire in the Indies did not.

II. POST-MAGELLANIC EXPEDITIONS

In the immediate wake of Magellan's voyage, expedition after expedition was dispatched by the Spanish Crown to retrace Magellan's path and realize his frustrated dream of empire.

Loaisa (sailing from La Coruña in 1525), Sebastian Cabot (sailing from Seville in 1526), Saavedra (sailing from Mexico in 1527), and Villalobos (sailing from Mexico in 1542), all attempted but failed to establish Spanish sovereignty in the region of the fabled spices.

Of those four, my country remembers the Malagueño Villalobos best, for he it was who gave the archipelago the name by which it has permanently come to be known: Las Islas Filipinas.

Success finally came with the expedition commanded by Miguel López de Legazpi, sailing from Mexico in 1564 and arriving in Cebu, in the Central Philippines, in 1565. By a series of brilliant strategies exhibiting remarkable political *savoir-faire*, Legazpi was able to bring the islands under the sovereignty of the Spanish Crown. Establishing his capital in the thitherto Muslim settlement of Manila (which he named *Insigne y Siempre Leal*) in 1571, Legazpi laid the groundwork for the colonial institutions in the Islands – a *groundwork* so stable that it lasted more than 300 years.

III. LAS ISLAS FILIPINAS: SPANISH OUTPOST OF EMPIRE

From 1565 to 1898, across the broad expanse of two oceans, Spain maintained her sovereignty over the Philippine Islands. Too remote for direct governance, the archipelago was ruled through Spain's American empire – as a *gobernación* of the Viceroyalty of Mexico.

For the greater part of these 333-odd years, the Philippines, like all the other Spanish colonies, was chiefly governed under three main laws: the *Siete Partidas*, the *Nueva Recopilación*, and the *Recopilación de las Leyes de las Indias*. The operation of these laws – taken separately or in relation to one another – was never very clear. The result was, frequently, confusion, inefficiency, corruption, and delay.

The chaotic state of colonial law is picturesquely described by *Sinibaldo de Mas*, Spanish economist and diplomat, who had been dispatched to Manila in the mid-nineteenth century by the central government. In a three-volume report entitled *Informe Sobre El Estado de las Islas Filipinas en 1842*, Sinibaldo de Mas minced no words about the colonial justice system:

“The Leyes de Indias, compiled in 1754, and all the previous decrees and royal orders before that time still rule in Filipinas, in addition to the decrees and edicts of governors-general. Of all this there is nothing, or very little, printed. The advocates generally know the laws in force by tradition and hear-say, but when they need any of the laws they have to look for it in the house of some friend, or if not that, in the secretary's office of the government, whence very frequently, it has disappeared, or in the office of the fiscal, or that of the intendant; because some orders are

communicated by [the Ministry of] Grace and Justice, and others by the treasury or by other ministries. He who has no relatives or is new in the country is ignorant of the rules in force, or has not the means of acquiring them. Besides so far as they are not overthrown by the *Leyes de Indias*, the laws of the *Siete Partidas* have as much force as do the latest *Recopilación [de las Indias]*, Roman law, royal and old law, and, in fact all the confused mass of the Spanish codes. Consequently, it is a vast sea in which are found abundantly the resources necessary to mix up matters and stultify the course of justice.”

IV. JUDICIAL SYSTEM IN SPANISH PHILIPPINES

The supreme judicial body in the colony was the *Royal Audiencia*, established in 1584, headed by the Governor-General.

In 1861, the *Audiencia* was reorganized and divided into two divisions (*Sala de lo Civil* and *Sala de lo Criminal*) with a Chief Justice as its head and eight Associate Justices composing the Court.

In 1893, a further reorganization established two territorial *Audiencias* (Cebu and Vigan) subject to the appellate jurisdiction of the *Audiencia* of Manila.

Below the *Audiencia* were the inferior courts: The Courts of First Instance (established in 1886) and the Justice of the Peace Courts (established in 1885).

It is interesting to note how long this judicial structure lasted. It was not until the 1980's that a general reform of the court system in the Philippines discontinued the use of the terms Court of First Instance and Justice of the Peace Courts.

V. LAST-MINUTE REFORMS

Major reforms did come in the late nineteenth century, with the extension to, and promulgation in, the colony of legislation of far-reaching significance. Among these important laws were:

1. the Spanish Mortgage Law, which systematized the registration of privately-owned land;
2. the Mining Law;
 1. the Copyright Law; and
 2. the Maura Law of 1893, which introduced broad local government reforms and laid the basis for the local-government system effective in the Philippines to this day.

The most significant of the new laws were the three major codes: the *Código Penal*, in 1887; the Code of Commerce, in 1889, and, of course, the *Código Civil*, also in 1889. These three codes formed much of the basis of Philippine private law and endured long after Spain left the Islands in 1898.

The *Código Penal* was not superseded until the Revised Penal Code of 1932.

Portions of the Code of Commerce remain in force to the present day.

The *Código Civil* was in force until 1950, when it was superseded by the Civil Code of the Philippines, which resembles the Spanish Code so closely some scholars consider it an English version of the *Código Civil*.

The importance and effect of these laws cannot be overemphasized. They would have brought about genuine and far-reaching, perhaps radical, reform in colonial Philippines. But introduced as they were at a time when the forces of revolt and independence had percolated to a boiling point among the populace, they came too late.

The Philippine Revolution broke out in 1896. It gave birth to the First Philippine Republic of 1898 – the first in Asia – with a full-dress civil government and a republican Constitution. It was a short-lived republic, for hardly had the Spanish colonial authorities departed when the United States imposed its rule over the Islands. By 1901, an American civil government was in place in Manila.

VI. THE TWENTIETH CENTURY: CONTINUING INFLUENCE OF SPANISH CIVIL LAW

The Americans set up a structure of civil government in the Philippines, but the influence of Spanish law did not die. On the contrary, it continued to grow and flourish. For one thing, both the Civil Code and the Code of Commerce – being laws of a non-political nature – remained in force. For another, young Filipinos in increasing numbers were enrolling in the law schools and with the passage of the years became the law practitioners, the judges, the law teachers, and the legal scholars of the new American colony.

At the end of the Spanish sovereignty at the turn of the new century, there were only two law schools in the Islands: the *Facultad de Derecho Civil* of the University of Santo Tomás and the *Escuela de Derecho*. Both schools taught the law courses in Spanish. In 1911, the newly-founded University of the Philippines opened a law school, conducting its courses in English. In quick succession, more law schools were established, all using the English language as medium of instruction.

In the beginning, all the products of the law schools were Spanish-speaking and all of them studied the Spanish Codes still in force in the Philippines. Together with the codal provisions, those law students studied the

commentaries of the eminent scholars who had written treatises on the Spanish codes. In the field of civil law, the names of the great Spanish commentators of the age became legends and by-words: Manresa, Sánchez Román, Valverde, Navarro Amandi, Díaz Martínez, Scaevola, Puig Peña, De Buen, and (later) Castán. The Philippine Supreme Court cited and quoted the works of these Spanish *jurisconsults*, sometimes critically, but most often approvingly and even reverentially. Their names became part of the jargon of Philippine law. If these names inspired respect in Spain, in the Philippines they inspired reverence.

In time, as already pointed out, these young Filipino students of law became prominent lawyers and scholars, and a number of them started writing commentaries on civil law and other fields. The students of yesterday had become the authorities and *gurus* of the succeeding decades. Home-grown legal legends sprouted, doing justice to their Spanish counter-parts, all of them immersed in the works of the Spanish commentators. In civil law emerged the names of Arellano, Bocobo, JBL Reyes, Tolentino, Padilla, Caguioa, Parás, Jurado. Vítug, Abad Santos, Aquino – everyone of them a titan of civil-law scholarship. They loomed gigantic, larger than life, for they stood on the shoulders of their Spanish mentors. The intellectual tradition from whose waters they drank was formed by the great civilists of the post-Spanish-Civil-Code era. The bonds of Spanish sovereignty may have been severed but the links uniting Philippine law to Spanish law had remained firm, not the least because all these Filipino civilists continued to be proficient in the Spanish language, thereby keeping the linguistic doors open.

VII. TWILIGHT: FROM CASTILIAN TO YANKEE

But gradually – and unnoticed by many – twilight was descending on the landscape. The Spanish language was slowly dying in the Philippines. The American public school system, print media, post-World War II political developments, and (not least) Hollywood and Tin Pan Alley were making English the *lingua franca* of the Philippines. By the 1950's the young men and women of the Philippines could no longer speak the language in which their parents conducted educated conversation. English had displaced Spanish in the Philippines. We were reading, no longer García Lorca and Darío, but Longfellow and Hemingway (and worse, trashy romantic novels in sub-standard English).

If our fathers recited:

*Juventud, divino tesoro,
Ya te vas para no volver,
Cuando quiero llorar, no lloro ...
Y a veces lloro sin querer ...*

We were reciting:

The curfew tolls the knell of parting day,
The lowing herd wind slowly o'er the lea,
The ploughman homeward plods his weary way,
And leaves the world to darkness and to me

VIII. EFFECT OF THE LANGUAGE SHIFT ON LEGAL STUDIES

The repercussions of the linguistic shift on legal scholarship were cataclysmic. A symptom may be detected in one tell-tale development. Supreme Court Justice JBL Reyes (perhaps the greatest Filipino civilist) once recounted to me that when he was appointed to the Supreme Court in 1954, the deliberations of the Court were exclusively in Spanish. In 1961, however, a new Chief Justice was appointed to succeed Ricardo Parás, who had retired. The new Chief Justice – Cesar Bengzon – an eminent jurist, who later became a judge of the International Court of Justice, began to conduct deliberations in English, because, although fluent in Spanish, he was more comfortable with English.

This linguistic shift was obvious in the younger generation of authors and commentators in Civil Law. This post-World War II generation is almost exclusively English-speaking, familiar with Shakespeare but not quite on speaking terms with Cervantes. As a result of this unfamiliarity with Spanish (and the other languages of the European homeland of the civil law tradition) there is a growing tendency on the part of these younger commentators to turn to American sources as their authorities, even in the field of civil law. The mismatch is many times painfully obvious, since American private law is not the well-spring of Philippine private law.

Now, there is nothing wrong for Filipino legal scholars to deepen their common-law roots. The Philippine legal system is a blend of the two great legal traditions of the world. Our public law is largely derived from the common-law tradition. Obviously, we have to turn to that legal tradition for a broader and deeper understanding of those lofty principles of justice and liberty enshrined in the Bill of Rights of our Constitution.

By the same token, however, we have to return to our civil law roots to revitalize those fundamental concepts of our private law, to drink once more from the waters springing from the fountainhead of our own private-law tradition.

IX. SIGNIFICANCE OF THIS CONFERENCE

It is in this context that this series of conferences that we started in this beautiful city in 2015 acquires profound significance. By coming together

in this manner, we acknowledge the crucial need to re-establish links, to reopen doors, to water the roots of our shared tradition – and for us Filipinos, to reconfirm our own *Hispanidad* as an essential aspect of what it is to be Filipino. The burden is mainly on us Filipinos. But what we started here in Málaga, the seeds we sewed in 2015 and continue to nurture to life today, may be the beginning of something meaningful, and valuable, and lasting; a new adventure, a rediscovered path, to knowledge, scholarship, and brotherhood.