The government of the Philippine Islands; its development and fundamentals,
Malcolm, George A. (George Arthur), 1881-1961
Rochester, N.Y. etc. The Lawyers co-operative publishing company, 1916.

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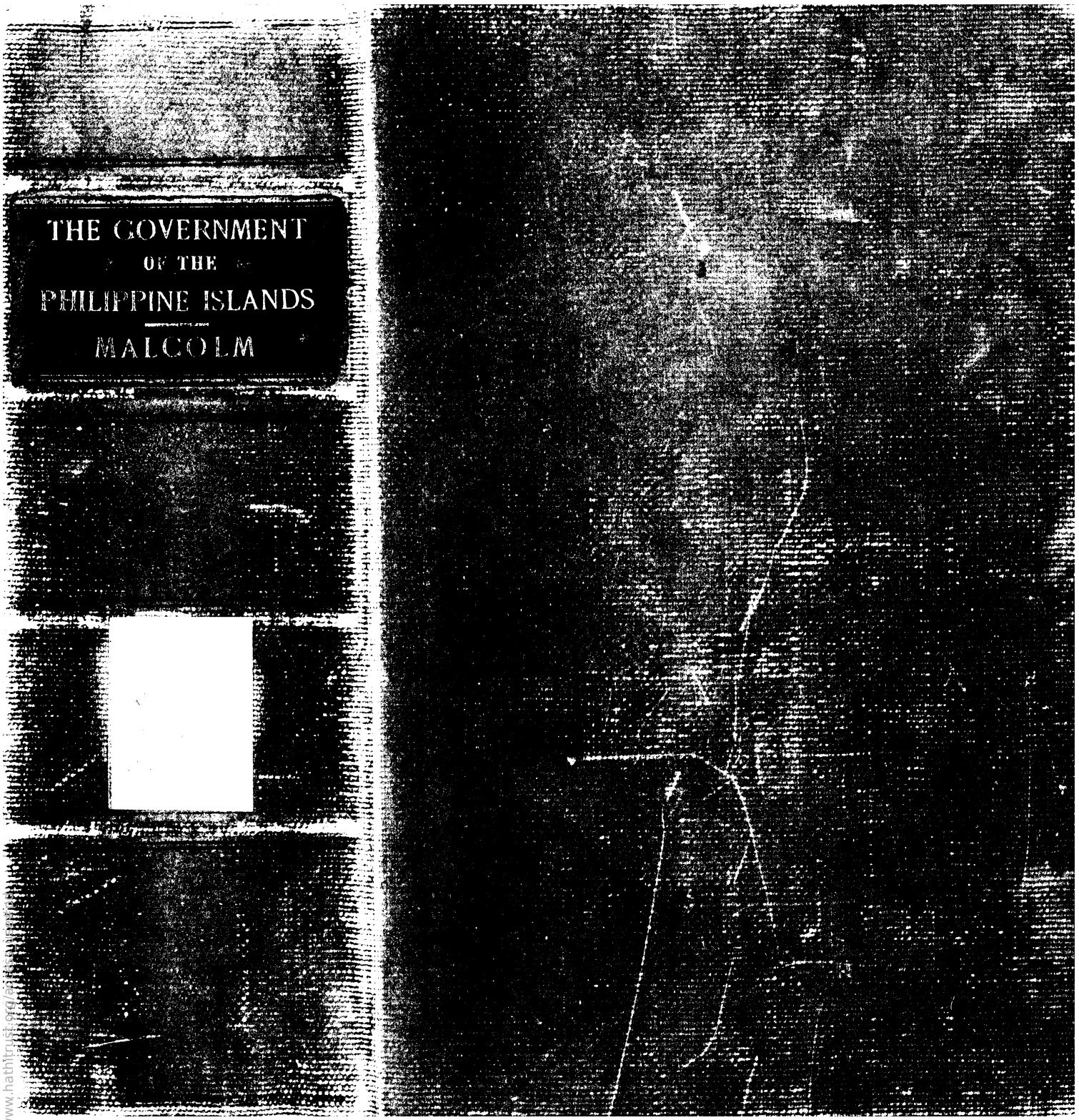

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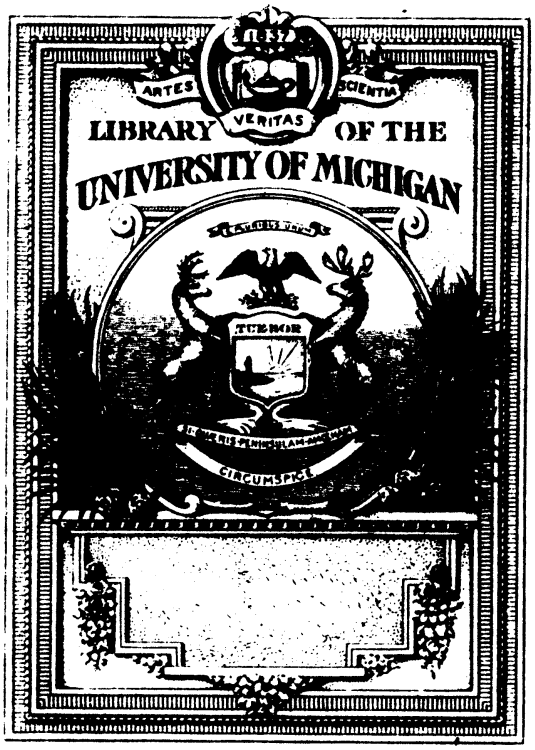

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THE GOVERNMENT

OF

THE PHILIPPINE ISLANDS

ITS DEVELOPMENT AND FUNDAMENTALS

BY

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THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY
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To
The University of the Philippines
This Work
Is Gratefully Dedicated

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PREFACE.

For a number of years, I have valiantly resisted the temptation to write a book on the Philippines. I should not have been in a scanty company if I had, for the Philippines have served as a favorite topic for the ready pen of many writers. The casual tourist has described the Islands, its people, and its problems without real investigation, but yet with solemn finality and comical frankness, often to the amusement of the Filipinos who see themselves and their country held up as tremendous psychological enigmas (see Epifanio de los Santos, 1 Philippine Law Journal, p. 247). Others have found a field for controversy in which all facts are made to substantiate a preconceived theory. Needless to say some few good books on the Philippines have been written. But if anyone has tried, as I have, to read everything available on the Philippines, they will realize the immense mass of chaff of bias and misinformation which covers up the grains of facts and truth (see Le Roy, Philippine Life in Town and Country, pp. 12, 13). A few words, therefore, may be permitted as to why still another Philippine volume is deemed necessary and as to what purpose it is intended to fulfil.

The few books which have touched the political and administrative side of the Philippines—William H. Taft, Civil Government in the Philippines, Felipe Calderón, *ABC del Ciudadano Filipino* (ABC of Filipino Citizenship), Pedro A. Paterno, *Gobierno Civil de las Islas Filipinos* (Civil Government of the Philippine Islands), Dudley O. McGovney, Civil Government in the Philippines, and Prescott F. Jernegan, The Philippine Citizen,

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are either out of date or were intended for grammar school use. The classes in the University of the Philippines and other schools have been handicapped by the lack of an available text on Philippine government and its allied subjects. The Administrative Code just enacted by the Philippine Legislature requires a general introduction if it is to serve the public fairly. I desire also to set an example for others, especially the younger members of my faculty, by encouraging them to prepare texts, especially adapted to local needs, instead of forcing students and lawyers to struggle through Spanish commentaries and American text-books, most of which are inapplicable. I feel, finally, that I can claim the privilege to write on this subject, because of having lived Philippine government in a varied experience with governmental questions, because of having taught public law for six years, and because of having made a conscientious, and it is to be hoped, a thorough, study of the sources.

The constant aim has been to preserve a neutral judicial attitude. If there has been any preconceived impression, it has been to discard a strictly American view, which inevitably leads to needless American glorification, and to deal sympathetically with Philippine institutions. In such an attempt possibly the foreign observer has the advantage over the native, in that he has a larger perspective. Just as it has taken foreigners such as De Tocqueville, Von Holst, Bryce, and Ostrogorski to analyze American institutions impartially, so do we find writers such as Morga (a Spaniard), Jagor (a German), Blumentritt (an Austrian), Foreman (an Englishman), and Le Roy (an American), best known and most authoritative of the writers who have dealt with Philippine questions. My own point of departure has been to assume that "goodness" is not racial, but that if you search long enough you can always find the dominant altruistic idea of any people. So I feel that the two principal races which have

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governed the Philippines—the Spanish and the American—are to be praised rather than condemned, and that the Filipino with whom they have joined, is possessed of many qualities which make for good citizenship.

Not without regret, is Dr. Johnson's statement in the preface to his dictionary here true, which it will be remembered he said "would in time be ended though not completed." The original intention was to include three more titles than now appear, namely, Title III Structural, Title IV Functional, and Title V Critical, but notwithstanding the material for these portions is collected, the transitory stage of the government made this plan inadvisable. Even if the original intention had been fulfilled, a perusal of such a work as the Cyclopedia of American Government will show the vast number of topics which could not be covered in a book of this kind, while even the subjects which are dealt with lead one into so many fields, that mistakes of facts or judgment will probably be found. Indeed, on Pre-Spanish Government little accurate data is available; on the Spanish Administration, while sources are available, I have preferred to rely on the best secondary authorities rather than to impose my own judgment; on the Revolutionary Government the sources are just beginning to come to light; on the recent American portions I am more at home. Nevertheless, this is not apology, for in order to substantiate my statements, I have everywhere backed them up with authorities, even at the expense of a loss of style. In this connection I have preferred to cite the Acts of the Philippine Commission and Legislature rather than the new Administrative Code, because the decisions are builded on the Acts, and because the Code is not yet well known. But if kind friends will call my attention to additional matter, or will offer suggestions in order that a second edition may be more nearly accurate and complete, it will be sincerely appreciated.

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To name all who have rendered me service would make a long list. Yet special mention must be made of Mr. Justice Trent, Mr. Teodoro M. Kalaw, Judge Goldsborough, Professor Craig, and Professor Bocobo, who have read the copy and made valuable suggestions. Dr. James A. Robertson, the eminent *Filipiniana* scholar, has kindly placed at my disposal, manuscripts otherwise unattainable. It is not without some pride that I also mention that those portions of which I was most in doubt have met with the approval of high authorities, such as Chief Justice Arellano. Two of my associates, Messrs. Hilado and Espíritu, have performed the laborious task of checking the citations, the best proof that can be offered of their substantial accuracy.

George A. Malcolm.

Manila, Philippine Islands,
September 1, 1916.

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PART 1.

DEVELOPMENT.

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§ 1. Analysis.—The subject to be considered is "The Government of the Philippine Islands," short form "Philippine Government." The Administrative Code of the Philippines legislatively describes "The Government of the Philippine Islands" as "a term which refers to the

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corporate governmental entity through which the functions of government are exercised throughout the Philippine Islands, including . . . the various arms through which political authority is made effective in said Islands, whether pertaining to the central government or to the provincial or municipal branches or other form of local government." (sec. 2.) It naturally divides into two components: "Government" and "Philippine Islands." Reversing the order for purposes of clearness—What in large strokes does the phrase "Philippine Islands" portray? What is meant by "Government?"

Philippine Islands.

§ 2. Discovery.—What we know as the Philippine Islands was first brought to the knowledge of Europe, as an incident in the first circumnavigation of the globe by the Portuguese, Ferdinand Magellan, in the employ of Spain.[1] This so-called discovery of the Philippines was the accidental result first of the search for the Spice Islands and secondly of the Papal Bull of Demarcation of 1493 and the treaty of Tordesillas, the year following.[2] Magellan arrived about the middle of March, 1521. Long before this, however (at least some seven hundred years previous) regular trade existed between the Philippines and China and several of the islands were well known to the Chinese. The islands were also in communication with Japan, Cambodia, Siam, the Molucas, Formosa, and the Malay Archipelago.[3]

[1] Described in Bourne, Spain in America, Ch. IX; and in F. H. H. Guillemard, Life of Ferdinand Magellan and the first Circumnavigation of the Globe, 1891—Perhaps the best modern account. Magellan is the Anglicized form of the name; Portuguese, Ferñao de Maglhaes; Spanish, Fernando de Magallanes.

[2] Quoted in Vol. I, Blair and Robertson, The Philippine Islands, pp. 97, 115.

[3] See Jagor, Travels in the Philippines, Eng. Ed. London, 1875, p.

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§ 3. Name.—The Islands have had various names.[4] First named the "Islands of St. Lazarus" by Magellan,[5] they were later christened "Felipinas" by one of the later Spanish voyagers, Ruy Lopez de Villalobos,[6] in honor "of our fortunate Prince"—Prince of Austria, later King Philip II. This was soon used in the ordinary way, as by Urdaneta and Legaspi in 1567, "las islas Filipinas"—the Philippine Islands. Morga, writing in 1609, stated that "they are properly called 'Felipinas' "[8]—Philippines.

§ 4. General description.[9]—The Philippine Islands, situated off the coast of Asia, form the most northern part of the eastern end of the great archipelago, known as the East Indies.[10] Subject to possible correction, accord-

12; Craig, A Thousand Years of Philippine History before the Coming of the Spaniards; Chau Ju-Kua, Chinese writer, Rockhill-Hirth translation, 1912; Parker, The Early Bisayans.

[4] There is authority for the statement that prior to the Spanish discovery, the islands were known as "Ma-i." Chau Ju-Kua, Chinese writer; Craig, A Thousand Years of Philippine History before the Coming of the Spaniards. In Spain they were referred to as the Western Islands and as the *Islas del Poniente;* in Portugal as the *Islas del Oriente* and the Eastern Islands; and there were various other names.

[5] Pigafetta, The First Voyage Round the World by Magellan, p. 74.

[6] *Relación del Viaje que hizo desde la Nueva España a las Islas del Poniente Ruy Lopez de Villalobos,* written by García Descalante Alvarado. *Colección de Docs. Inéd. del Archivo de Indias* v. p. 127.

[8] Morga, *Sucesos de las Islas Filipinas,* 1609, Ch. VIII, Blair and Robertson, Vol. XVI, pp. 69 *et seq.* See Bourne's Historical Introduction to Blair and Robertson, The Philippine Islands, Vol. I, pp. 28-31.

[9] This section was very kindly checked by the Director of Coast Surveys.

[10] Census of the Philippine Islands, 1903, Vol. I, p. 49; Gazetteer of the Philippine Islands, p. 1; Elisée Reclus, The Earth and Its Inhabitants (Oceanica), 1892 Ed., by Keane, Ch. IV. More exactly stated, the Philippine Archipelago extends from 4° 35′ to 21° 10′ north latitude and lies between the meridians of 116° 00′ and 127° 00′ east longitude

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ing to the United States Coast and Geodetic Survey the number of islands in the group is 3,141,[11] with a land area of 115,026 square miles. By the census of 1903 the population was put at 7,635,426, but is now undoubtedly well over 8,000,000. Manila, the capital and metropolis, has a population of almost 300,000.

The Philippines are principally of igneous formation with some sedimentary rocks and extensive coral growths.[12] According to Alfred Russel Wallace [13] "the

[11] Census, Vol. I, pp. 56, 57.—"1473 (islands) are so far as known without names." "1095 are large and fertile enough to be inhabited." Worcester, The Philippines, Past and Present, Vol. II, p. 792. The two largest are Luzon and Mindanao, with areas of 40,969 and 36,292 square miles, respectively.

[12] "The Indians have a tradition that the earth was borne on the shoulders of a giant, who, getting tired of his heavy burden, tumbled it into the ocean, leaving nothing above the waters but the mountains, which became islands for the salvation of the human race." Bowring, A Visit to the Philippine Islands, pp. 71, 72. In the work of Dr. N. M. Saleeby entitled the "Origin of the Malayan Filipinos" it is stated: "The traditions of Tapul state that this island was originally a boat around which dirt from the surrounding waters accumulated and formed land. No people were living in the Sulu Archipelago at that time and no other island had yet been formed. A large bird alighted on this island and laid an egg, out of which came the first man. A Chinese raja happened to stop at Tapul and anchored his boat at the southern extremity of the island. In the night the dewas stole his daughter and hid her inside a stalk of bamboo. The man who was born out of the egg on the northern side of the island had grown in the mean time so lonesome that he clung to the feet of the mother bird, when she visited him later, and wanted to accompany her. This she did not allow, but putting a bolo in his hand, led him to a stalk of bamboo on the southern side of the island, which appeared larger than usual, and directed him to cut it. This he did, and to his surprise a girl was inside the bamboo, whom he married and lived with on that solitary island." (p. i.) See also Loarca, *Relación de las Islas Filipinas*, 1582, Ch. VII, Blair and Robertson, Vol. V, pp. 121, *et seq.* for various other traditional accounts of the islands creation.

[13] Malay Archipelago, 10th Ed. 1890, Ch. I.

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Philippine Islands agree in many respects with Asia and the other islands" (of the Malay Archipelago), and were once part of the continent of Asia.

The prevailing physical features are heavily forested mountain ranges, with alternating valleys or plains. The forests are of wide extent and embrace a great variety of woods, many of them highly valuable.[14] The flora is rich and varied. There are but three rivers attaining a length of two hundred miles, namely, the Cagayan, of Luzon, and the Mindanao and Agusan, of Mindanao. The Pasig, one of the shortest rivers in the country, carries the greatest commerce.[15]

The Philippine Islands are fundamentally agricultural. Manufacturing is yet in its infancy. Mineral deposits have been found and are being worked. Fishing for domestic consumption is a favorite pursuit. The principal vegetable products are *abacá* (hemp), copra (dried meat of the cocoanut), tobacco, sugar, and rice.[16]

§ 5. People.—The people of the Philippines are today made up of three general racial divisions: the Negritos, the Malays, and the foreign element of Mongolians and Caucasians. The aboriginal inhabitants of the islands are generally considered to be the Negritos ("little negroes"), a race of pigmy blacks, of a primitive nature and racially distinct.[17] With the exception of the small remnants of these Negritos,[18] living in the more isolated

[14] Census, Vol. I, p. 75.

[15] Forbes-Lindsay, America's Insular Possessions, Vol. II, p. 20.

[16] Census, Vol. IV, pp. 11 *et seq.;* Worcester, The Philippines Past and Present, Ch. XXIII; Forbes-Lindsay, *id.*, p. 65.

[17] H. Otley Beyer, The Aborigines, in the Cablenews-American Yearly Review Number, 1911, p. 97. "Negritos" also known as Aetas, Agtas, or Itas. See Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, p. 153.

[18] Estimated at 23,511 by the census of 1903.

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mountain regions, and of a few thousand Chinese and other foreigners, the stock of the Philippines consists of Malays [19] of the same general origin—successive waves of immigration from the south. These are "the persistent, strongly-marked Malay type" alike in physical features. They differ in dress, customs, and languages (but all closely related one to the other). The sharpest division of the Malayan element is between the "Filipinos," [20] in the restricted sense, and the "Moros." [21] The former are mostly Christians while the latter are Mohammedans. The Spaniard, Chinese, and lately the American are the principal of the numerous foreign strains introduced into the Philippines. The first two have been, and the latter probably will be, largely absorbed in the native blood.[22]

[19] "We are not yet wise enough to say just who or what the Malay is. . . . Whether the Malay is only a more divergent strain of the Mongolian family, differentiated by centuries of existence on the shores and in the islands of the great ocean, or represents again a primitive blend of Mongolian and Caucasian (in some, at least, of his subdivisions) in the remote days of early human life on the greatest of continents, are broader questions underlying our general 'Oriental problem' of to-day, but a solution of which would be as yet mere hazard." Le Roy, Philippine Life in Town and Country, 1905, Ch. II generally and pp. 16, 19, 20, 35. The number of Malays, according to the census of 1903, was 7,539,632 out of a total population of 7,635,426.

[20] "They are from the same Malayan stock as the Moro, but owing to differences of religion, environment, manner of life and political condition, have developed diversified physical and mental characteristics. They are the representative people of the Archipelago, and to them the name 'Filipino' is applied in a distinctive sense." Forbes-Lindsay, America's Insular Possessions, Vol. II, p. 88.

[21] "The word Moro, or Moor, in its original signification simply meant Muhammadan. It is not an ethnologic term, but is generally used at present as a comprehensive designation for the several Malayan tribes of the southern islands, who adhere to Islam." Forbes-Lindsay, America's Insular Possessions, Vol. II, p. 104. The Moros, according to the census of 1903, number 277,547.

[22] "During the last quarter of the nineteenth century the European

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The conclusion therefore is that with a few exceptions, the people of the Philippines "are one racially" [23] and that the "racial stock of the Philippines is quite homogenous." [24]

§ 6. **Periods of history.**—The history of the Philippines naturally divides itself into three great formative periods: the pre-Spanish; the era of Spanish rule, from the discovery of the archipelago by Magellan, March, 1521, to Admiral Dewey's victory over the Spanish squadron in Manila Bay, May 1, 1898; and the American period.[25] Overlapping both the Spanish and American administrations in point of time is a fourth division, the

Spaniards, apart from (the) functionaries, constituted scarcely a thousand of the population; and the native Spaniards, or creoles, were about three in ten thousand (.03 per cent). Their influence upon the native strain was but slight; of Spanish mestizos (*mestizos privilegiados*) there were less than two per cent. Plainly the case is one quite divergent from that of America. If the Chinese be reckoned in at two and a half per cent. (Foreman, p. 118, estimates the total number of Chinese in the islands just before the last insurrection against Spain (1896) as 100,000) and the Chinese mestizos (*mestizos de sangley*) at two per cent., the essential predominance of the native Malay stock is but accentuated; Chinese and Spanish mestizos together constitute 3½ per cent., but the former are more numerous (Blumentritt, pp. 32, 35); the whites, at least, have been but transitory in the population." Keller, Colonization, p. 346.

[23] See article by Dr. Merton L. Miller, Chief Ethnologist, Bureau of Science, entitled "The People of the Philippines," in Cablenews-American, Yearly Review Number, 1911, pp. 90, 91; David P. Barrows, Census of the Philippine Islands, 1903, Vol. I, p. 411. "The Indians whom the Spaniards found here were of average stature, olive color, or the color of boiled quinces, large eyes, flat noses, and straight hair. . . . They were distinguished by different names, but their features and customs prove that the origin of all these people is one and the same, and that they did not compose different races." Joaquin Martinez de Zúñiga, O. S. A., *Historia,* 1803, pp. 19-38, XLIII, Blair and Robertson, pp. 116, 117.

[24] Le Roy, Philippine Life in Town and Country, p. 16.

[25] Wright, A Handbook of the Philippines, p. 135.

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Philippine Revolution, liable in the future to be carried forward into a new epoch. The first was therefore strictly Filipino; the second, Spanish-Filipino; the third, American-Filipino; and the last, again, Filipino. It is noteworthy that the Philippines have thus been touched by three civilizations—the Aboriginal and Oriental; the Latin and European; and the Anglo-Saxon and distinctly American. One has been that of the patriarchal, the second that of the monarchical, and the last that of the democratic form of government.

§ 7. Boundaries and limits.—The boundaries of the Philippine archipelago are those set forth in article III of the Treaty of Paris between the United States and Spain, of December 10, 1898. In addition to the lands there delimited, the United States subsequently acquired from Spain the little group of islands known as Cagayán Sulu and Sibutu, lying off the north coast of Borneo.

The jurisdictional limits[26] of the Philippine Islands generally include all of the land and water within its geographical boundaries including all rivers, lakes, bays, gulfs, straits, coves, inlets, creeks, roadsteads, and ports lying wholly within them. It further extends three geographical miles from the shore of the islands of the Philippines, starting at low water mark. It further includes those bays, gulfs, adjacent parts of the sea or recesses in the coast line whose width at their entrance is not more than twelve miles measured in a straight line from headland to headland. It further includes all straits only or less than six miles wide as wholly within the territory of the Philippines, while for those having more than that width, the space in the center outside of the marine league limits is considered as open sea. It further extends for customs purposes at least four leagues from the

[26] See Op. Atty. Gen. P. I., Jan. 18, 1912, citing the best and latest authorities.

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coast. It further can be said that the Philippine Islands exercises in matters of trade for the protection of her marine revenue and in matters of health for the protection of the lives of her people a permissive jurisdiction, the extent of which does not appear to be limited within any certain marked boundaries further than that it can not be exercised within the jurisdictional waters of any other state, and that it can only be exercised over her own vessels and over such foreign vessels bound to one of the ports of the Philippines as are approaching but not yet within the territorial maritime belt.

Government.

§ 8. State defined.—In modern political science, there is understood by "state," in its widest sense, an independent society, acknowledging no superior. The United States Supreme Court in an early case defined "state" as "a complete body of free persons united together for the common benefit, to enjoy peaceably what is their own and to do justice to others." [27] A more comprehensive definition containing the essential constituent elements is that a state is "a community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control and possessing an organized government to which the great body of inhabitants render habitual obedience." [28]

[27] Chisholm *v.* Ga. (1793), 2 Dall. (U. S.), 455, 1 L. Ed. 456.

[28] See Garner, Introduction to Political Science, pp. 38-41, Burgess, Political Science and Constitutional Law, Vol. I, Part I, Book II, Ch. 1, Holland's Jurisprudence, 11th Ed., pp. 46-48, quoting classical definitions, and I Moore, International Law Digest, sec. 3, quoting numerous definitions. Cooley, Constitutional Law, p. 20, classifies a state as "either sovereign or dependent. It is sovereign when there resides within itself a supreme and absolute power, acknowledging no superior, and it is dependent when in any degree or particular its authority is limited by an acknowledged power elsewhere." (Citing

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§ 9. Government defined.—The word "government" is derived from the Latin *gubernaculum,* a rudder, *gubernare,* to steer, direct, control. It has been variously described in other figures of speech as "the ligament that holds the political society together;" [29] "the machinery or expedient for expressing the will of the sovereign power;" [30] "mere contrivances." [31] It is an essential mark of the state—the collective name for the agency, magistracy, or organization, through which the will of the state is formulated, expressed, and realized.[32] According to President Wilson: "Government, in its last analysis, is organized force. Not necessarily or invariably organized armed force, but the will of a few men, of many men, or of a community prepared by organization to realize its own purposes with reference to the common affairs of the community." [33] Again the same author (p. 576) states that "government is merely the executive organ of society, the organ through which its habit acts, through which its will becomes operative, through which it adapts itself to its environment and works out for itself a more effective life." A definition of "government" which has been quoted with approval by the Supreme Court of the Philippines, and which therefore has for us especial weight is "that institution or aggregate of institutions by

Vattel, b. 1, Ch. 1, par. 2; Halleck, Int. Law, 65.) And Holland's Jurisprudence, 11th Ed., p. 50, as Simple and Not Simple. For further classification, see Moore, *id.*, secs. 5-14.

[29] Thomas *v.* Taylor, 42 Miss. (1869), 651, 706, 2 Am. Rep., 625 (citing Vattel 59).

[30] Cherokee Nation *v.* Southern Kan. R. Co. (1888), 33 Fed., 900, 906.

[31] Language of Professor Seeley.

[32] Garner, Introduction to Political Science, pp. 79, 43, 44, citing Schulze, "Deutsches Staatrecht," Vol. I, p. 17; Hauriou, "Droit administratiff," p. 7; Von Mohl, "Encyklopadie," p. 72; Jellinek, "Recht des mod. Staates," pp. 152-155; Duguit, "Droit constitutionnel," p. 19.

[33] Wilson, The State, p. 572.

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which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. Government is the aggregate of authorities which rule a society." [34]

§ 10. **Nation defined.**—"Nation," a word with a definite and well understood meaning in the English language, signifies legally a people distinct from others.[35] Writers on political science describe a "nation" as consisting of men of one blood, with such accretions from alien races as, resulting from common affinities, are destined to be permanent; occupying a determinate territory, within whose limits it maintains its own forms of social organization; possessing the same language, laws, religion, and civilization, the same political principles and traditions, the same general interests, attachments, and antipathies; in short, a people bound together, by common attractions and repulsions, into a living organism, possessed of a common pulse, a common intelligence and aspirations, and destined apparently to have a common history and a common fate.[36] The French publicist, Pradier-Podré says that "Affinity of race, community of language, of habits, of customs and religion, are the elements which constitute the nation." [37] As undoubtedly the people of nearly every important state would fail to meet the tests of such a perfect and abstract definition, a more practical conception of a nation would be—a group of men who have become amalgamated into essential, ethnic unity through long association. "And yet, when

[34] U. S. *v.* Dorr (1903), 2 Phil., 332, 339, cited and followed in 1 Corpus Juris., p. 1239, note 72; Bouvier's Law Dictionary, 891.

[35] Worcester *v.* Georgia (1832), 6 Pet. 515, 557-561, 8 L. Ed. 483.

[36] Jameson, Constitutional Conventions, 4th Ed., p. 32; Garner, Introduction to Political Science, p. 45.

[37] "Traité de Droit int. pub.," Vol. I, p. 126.

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one attempts to define 'a nation,' one finds the definition impossible. Language, race, geographical area, past history, manners and customs, origins, religions, ideals, all enter into its realization. But ultimately one is obliged to fall back upon the assertion that a nation exists where its component atoms believe it to be a nation; where they are willing to live for and to die for a mystical entity whose life includes the lives of all the individuals, but whose life transcends the lives of those individuals." [38] But every combination of men who govern themselves independently of all others will not be considered a nation. The body thus formed must respect other nations in general, and each of their members in particular. Such a society has her affairs and her interests; she deliberates and takes resolutions in common,—thus becoming a moral person, who possesses an understanding and will peculiar to herself and is susceptible of obligations and rights.[39]

Later, it will be interesting to determine whether tested by these definitions the inhabitants of the Philippines constitute a "nation" or a "people" or have potentialities therefor.

§ 11. Administration defined.—In a definition followed by our Supreme Court it was said: "By 'administration,' again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time being (the chief ministers or heads of departments)." [40] Another meaning is the work which

[38] The Nation (London), June 26, 1915. See Walter Lippman, The Stakes of Diplomacy.

[39] Vattel, Prelim., secs. 1, 2; The Cherokee Nation *v.* The State of Georgia (1831), 5 Pet. (U. S.) 52, 8 L. Ed. 43.

[40] U. S. *v.* Dorr (1903), 2 Phil. 332, cited and followed in 1 Corpus Juris., p. 1239, note 72; Bouvier's Law Dictionary, 891.

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these persons perform.[41] The term is an indicative of both organization and function.

§ 12. Terms distinguished.—The terms here defined are not always used in their strictness. Thus the government of a state being its most prominent feature, which is most readily perceived, "government" has frequently been spoken of when "state" was meant; "state" again has been confused with "nation;" and "government" has been used as synonymous with "administration." [42] Yet there are marked differences between these terms.

"The distinction between the government and the state itself is important and should be observed," says the United States Supreme Court in a leading case.[43] "In common speech and common apprehension they are usually regarded as identical. . . . The state itself is an ideal person, intangible, invisible, immutable. The government is an agent, and within the sphere of the agency, a perfect representative." According to an apt illustration the government is no more the state itself than the brain of an animal is itself the animal, or the board of directors of a corporation is itself the corporation.[44]

The term "state" is also often employed as importing the same thing as "nation." There is, however, no necessary connection between the two. Primarily the state is a legal or political concept, while the nation is a racial or ethnical concept—nearly akin to "people." [45] A single

[41] Frank J. Goodnow, I Cyclopedia of American Government, pp. 8-10. See also Holland's Jurisprudence, 11th Ed. p. 369, and the Philippine *Administrative* Code.

[42] See Bouvier's Law Dictionary, p. 891; U. S. *v.* Dorr (1903), 2 Phil. 332, 339; Cooley's Constitutional Law, p. 20.

[43] Poindexter *v.* Greenhow (1884), 114 U. S. 285, 29 L. Ed. 185.

[44] Garner, Introduction to Political Science, p. 43.

[45] See Garner, Introduction to Political Science, p. 45; Texas *v.* White (1869), 7 Wall. 700, 720, 19 L. Ed. 227, 236.

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state may embrace several different nations or peoples; a single nation will sometimes be so divided politically as to constitute several states.[46]

Naturally "government" the agent of the state could not be identical with the "nation"—the people ruled by this agent for this superior principal. That "government" is not "administration" is also plain when it is remembered that "administration"—literally "to *assist in*" is but *one* of the functions of "government." [47]

The state then is neither the government, the nation, the administration, nor, indeed the territory over which its authority extends. The state is a political unity. The one characteristic that is essential to the state, and serves to distinguish it *in toto genere* from all other human associations, is its possession of political sovereignty.[48]

The government finally is not the state, the nation, or the administration. It is the instrumentality of the state. The different manifestations of this instrumentality we are to develop, analyze, describe, and criticize.

§ 13. Necessity of government.—"No society can exist a week, no, not even an hour, without a government." [49] This is so because from families and groups of families have evolved societies, mutually dependent, and requiring authority, if anarchy is not to exist. Man is essentially an appropriating, producing, and exchanging being. Man's nature thus requires government. What-

[46] See Cooley's Constitutional Law, p. 20. But some claim that the only perfect and legitimate state exists where the state and one nation are coextensive. See Holland's Jurisprudence, 11th Ed. p. 46.

[47] See Goodnow, Principles of the Administrative Law of the United States, Ch. I; and U. S. *v.* Dorr (1903), 2 Phil. 332, where the Supreme Court held that the term "government" as employed in Act 292 of the Philippine Commission is used in the abstract sense of the existing political system as distinguished from the concrete organism of the government.

[48] Willoughby, The American Constitutional System, pp. 3, 4.

[49] Guizot, History of Civilization, Vol. I, p. 108.

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ever the form of government, the fundamental idea however rudely conceived, is always the protection of society and its members, security of property and person, the administration of justice therefor, and the united efforts of society to furnish the means or authority to carry out its objects.[50] "Primarily, government exists for the maintenance of social order." [51]

§ 14. Forms of government.—The first scientific division of states, and so of governments, was by Aristotle who classified them according to the seat of supreme power. There were thus three standard forms of government: Monarchy—the rule of one; Aristocracy—the rule of the few; and Democracy—the rule of the many.[52] Aristocratic government (with other classes such as patriarchal—the rule of the family) having almost disappeared, and Monarchical government having been modified by the force of popular will, Democratic government especially for the Philippines, considering its connection with the United States and the aspirations of the Filipinos, has most practical interest. Direct democracies being now impracticable, we find representative democracies —that is republics. Madison, in the Federalist, after noticing various misapplications of the term, defines a republic, in substance, as follows: "A republic . . . is a government which derives all its powers, directly, or

[50] Bouvier's Law Dictionary, p. 892. "Government is a necessity of man's nature, and not a mere caprice, however wisdom and experience may mould its structure or vary its application. Its perpetuity springs from its continued necessity, and is therefore an essential element of its nature. Hence, no people since the formation of the world have been known to exist without government in some form." Hood *v.* Maxwell (1866), 1 W. Va. 219, 242.

[51] City of Chicago *v.* Sturges (1911), 222 U. S. 313, 322-324, 56 L. Ed. 215.

[52] Polit. III, 4 and 5; Wilson, The State, p. 577; Burgess, Political Science and Constitutional Law, Vol. I, Part I, Book II, Ch. III, Vol. II, Part II, Book III, Ch. I.

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indirectly, from the great body of the people. It is administered by persons holding their offices either during pleasure or for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from a small proportion or favored class. It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified." [53]

§ 15. The government of the United States is the best example of Republican government. Lord Bryce has termed it "a Commonwealth of commonwealths, a Republic of republics, a state, which, while one, is nevertheless composed of other states even more essential to its existence than it is to theirs." [54] In other words, the United States is a federal, presidential republic made up of states. It is moreover a Democratic republic in which sovereignty resides in the people and is exercised by them either directly or indirectly. It exemplifies popular gov-

[53] The Federalist, No. 39; also Nos. 10, 14, *Id.*; Woodburn, The American Republic, p. 56. This author recognizes several kinds of republic, as follows: "An *Oligarchic Republic*, like Venice. This was a republic only in name; only a handful of nobles exercised their oppressions under an honorable title. A *Military Republic*, like Rome. This was organized on a military plan for military purposes, that the whole power of the State might be used in quick, united action in conquest or defence. A *Federal Republic*, like Switzerland or the United States, made up of minor states, also republics, united for common purposes. A *Centralized* or *National Republic*, like France, with all powers of government exercised by the Central Government. The United States is, as we shall see, partly a Federal and partly a National Republic. A *Democratic Republic*, like Switzerland or the United States, in which the sovereign power is derived from and is exercised, either directly or indirectly, by the great body of the people." pp. 55, 56.

[54] Bryce, The American Commonwealth, Rev. Ed. 1914, Vol. I, p. 15.

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ernment. In short, it is a complex, Federal-national, Democratic republic, not consolidated, but federated, with local self-government in the states, under the protection of a powerful nation.[55]

§ 16. **Further classifications.**—There are many other different groupings of political societies and governments.[56] Three only, as of local interest, it is desired to notice—"Constitutional" and "Absolute," "Bureaucratic" and "Popular," and "Paternal" and "Individualistic."

A constitutional government is one in which the powers of sovereignty are defined and limited in accordance with the principles of a fundamental law called a constitution. An absolute government, on the other hand, is one in which no limitations have been imposed upon the sovereign, or in which no formal constitutional guaranties exist for the protection of the citizen.[57]

The other classifications arise principally because of the spirit which pervades the administrative service and the sphere of its activities. A bureaucratic government is one which is composed of administrators specially trained for the public service, who enter the employ of the government only after a regular course of study and examination, and who serve usually during good behavior and retire on pensions. "It accumulates experience," says John Stuart Mill, "acquires well-tried and well-traditional maxims and makes provision for appropriate practical knowledge in those who have the actual conduct of

[55] Madison in the Federalist, No. 39; Woolsey, Political Science, Vol. I, pp. 166-170; Woodburn, The American Republic, pp. 46 *et seq.*, 93.

[56] See Bouvier's Law Dictionary, pp. 892-894; Garner, Introduction to Political Science, pp. 178-204; Holt, Introduction to the Study of Government, Ch. I, etc.

[57] Davis, Elements of International Law, pp. 32, 33, citing standard authorities.

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affairs. . . . The disease, . . . which afflicts bureaucratic governments and of which they die is routine. They perish by the mutability of their maxims and still more by the universal law that whatever becomes a routine loses its vital principle." [58] Contradistinguished from bureaucratic government is popular government, that is, government by persons drawn at regular intervals from the ranks of the people, who, after a brief service, return to the private walks of life. A paternal government is one whose functions are not limited merely to restraining wrongdoing and the protection of private rights, but which goes farther and endeavors to promote by various means the social well-being of the people. An individualistic government is one whose activities are limited mainly to the simple police functions of maintaining peace, order, and security of society and the protection of private rights.[59]

§ 17. Functions of government.[60]—Between the individualistic and socialistic extremes, come the func-

[58] Representative Government (Universal Library edition), pp. 109, 110.

[59] Definitions those of Garner, pp. 197-200. "Philosophically, there are two opposed view-points in the conception of the ends of the state. According to one notion, that of Kant, the state is designed solely to afford legal protection to its members in an equal degree. Its purpose is that each may enjoy the greatest possible freedom, solely through an equal freedom of all others. This is accomplished by a limitation upon the spheres of activity of all members of the state. Such a state, limited solely to a protective activity, is called a *Rechtsstaat,* in a narrow sense. . . . A variety of welfare-theories stand opposed to the theory of *Rechtsstaat.* They have in common, that they do not regard the state as having simply a negative legal function, or as only making a way for individual activity. According to these theories, the state also has an end to attain by positive action. This object is perceived as public welfare (*salus publica*)." Gareis, Science of Law, p. 223.

[60] See Wilson, The State, Ch. XV; Holt, Introduction to the Study of Government, Chs. XI, XII.

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tions of government most often existing in actual operation. These can be placed in two groups, constituent and ministrant. The first are not optional; the second are optional. The first are the very bonds of society; the second are undertaken only by way of advancing the general interests of society. President Wilson enumerates the constituent functions, as follows:

"(1) The keeping of order and providing for the protection of persons and property from violence and robbery.

"(2) The fixing of the legal relations between man and wife and between parents and children.

"(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

"(4) The determination of contract rights between individuals.

"(5) The definition and punishment of crime.

"(6) The administration of justice in civil cases.

"(7) The determination of the political duties, privileges, and relations of citizens.

"(8) Dealings of the state with foreign powers: the preservation of the state from external danger or encroachment and the advancement of its international interests."

The ministrant functions are of five general classes: (1) Public Works; (2) Public Education; (3) Public Charity; (4) Industrial Regulations; (5) Health and Safety Regulations.[61] The principles determining

[61] Dr. Wilson gives a partial list of the Ministrant Functions as follows:

"(1) The regulation of trade and industry. Under this head I would include the coinage of money and the establishment of standard weights and measures, laws against forestalling and en-

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whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake, and (2) that a government should do those things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals.

§ 18. Purpose of government.—A principle older than constitutions, and older than governments is that "Government is instituted for the protection, security, and benefit of the people." [62] Practically, although not ideally stated, government exists to maintain peace and order, to insure safety from external aggression, and to advance the general welfare within the state. In the famous constitution of Massachusetts of 1780, the prototype of many constitutions, it

grossing, the licensing of trades, etc., as well as the great matters of tariffs, navigation laws, and the like.

"(2) The regulation of labor.

"(3) The maintenance of thoroughfares,—including state management of railways and that great group of undertakings which we embrace within the comprehensive term 'Internal Improvements.'

"(4) The maintenance of postal and telegraph systems, which is very similar to (3).

"(5) The manufacture and distribution of gas, the maintenance of waterworks, etc.

"(6) Sanitation, including the regulation of trades for sanitary purposes.

"(7) Education.

"(8) Care of the poor and incapable.

"(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.

"(10) Sumptuary laws, such as 'prohibition' laws, for example." p. 614.

[62] Sec. 2, art. 1, Constitution of Iowa. See Koehler and Lange *v.* Hill (1883), 60 Iowa, 543.

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was said: "The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life." Mr. Chief Justice Taney has said that "The object and end of all government is to promote the happiness and prosperity of the community by which it is established." [63] Expanded, somewhat, in the language of Mr. Justice Story, "The great problem in human government has hitherto been, how to combine durability with moderation in powers, energy with equality of rights, responsibility with a sense of independence, steadiness in councils with popular elections, and a lofty spirit of patriotism with the love of personal aggrandizement; in short, how to combine the greatest happiness of the whole with the least practicable restraints so as to insure permanence in the public institutions, intelligent legislation, and incorruptible private virtue." [64] President Wilson in the last words of his work on the State sums up the whole matter as follows: "The end of government is the facilitation of the objects of society. The rule of governmental action is necessary co-operation. The method of political development is conservative adaptation, shaping old habits into new ones, modifying old means to accomplish new ends." [65] The wide transfusion of the idea is shown by the words of Rizal: "Govern-

[63] Charles River Bridge *v.* Warren Bridge (1837), 11 Pet. 420, 9 L. Ed. 773.

[64] Story on the Constitution (1840), p. 45.

[65] See Wilson, The State, Ch. XVI. Former President Harrison states that "A government that proceeds from the people, is administered by them, and has for its high and only end the general welfare, ought to be able to command the respect, the allegiance, and the obedience of its citizens." This Country of Ours, p. XVI.

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ments are established for the welfare of the people, and in order to accomplish this purpose properly they have to follow the suggestions of the citizens, who are the ones best qualified to understand their own needs." [66]

These high authorities all lead to the same conclusion —that government exists and should continue to exist for "the good of mankind" [67]—for the benefit of the people governed; that its people may grow in civilization; that they may be educated and uplifted; that they may be developed materially, mentally, morally, spiritually.[68] All lead to the further corollary that much as good government is to be desired, government itself is not the end but a means to the end. This doctrine, which was explicitly taught by Aristotle, has not been better stated than by Dante:

"And the aim of such rightful commonwealths is liberty, to wit, that men may live for their own sake. For citizens are not for the sake of the consuls, nor a nation for the king; but contrariwise the consuls are for the sake of the citizens, the king for the sake of the nation. For as a commonwealth is not subordinate to laws, but laws to the commonwealth; so men who live according to the laws are not for the service of the lawgiver, but he for theirs; which is the philosopher's (Plato's) opinion in that which he hath left us concerning the present matter. Hence it is plain also that though a consul or king in regard of means be the lords of others, yet in regard of the end they are the servants of others, and most of all, the monarch, who, without doubt, is to be deemed the servant of all." [69]

[66] José Rizal, The Reign of Greed, English translation by Charles Derbyshire, p. 142.

[67] Locke, Two Treatises of Government, sec. 229.

[68] President Woodburn of Indiana University in The American Government, pp. 32, 33.

[69] Quoted by Pollock, Introduction to the History of the Science of Politics, pp. 37, 38.

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§ 19. Tests of a good government.—Varying elements and conditions must be considered. The government best suited for the German might not be for the Filipino. There are nevertheless certain general tests applicable to all. Alexander Hamilton declared that the "true test of a good government" was its "aptitude and tendency to produce a good administration."[70] John Stuart Mill said "the first element of a good government was the promotion of the virtue and intelligence of the people." The first question to be considered, he said, was "how far does the government tend to foster the moral and intellectual qualities of the citizens?" The government which does this best, he maintains, is likely to be the best in other respects.[71] The main criterion of a good government, in other words, is the degree to which it tends to increase "the sum of good qualities" in the governed, collectively and individually, rather than the efficiency of the government itself as an administrative body, although of course governmental efficiency is also to be desired.[72]

§ 20. Success or failure of government.—Mabini, the master mind of the Philippine Revolution, gave the following sound advice on this subject:

"It is true that he who attempts to govern only with theory must fail, because the science of government is essentially practical; but it is true also that every practice contrary to theory, or rather to reason and truth, is properly an abuse, that is to say, a corrupt practice, since it corrupts society. The success of him who governs always results from practice (*la práctica*) adjusted to the natural and unchangeable order of things and to the special necessities of the locality, which success is obtained by the aid

[70] The Federalist, No. 66.
[71] See his Representative Government, Ch. 2.
[72] Garner, Introduction to Political Science, pp. 235, 236.

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of theoretical knowledge and of experience. It is not, then, theory, but practice confused by evil passions or ignorance, which is the origin of all governmental failures." [73]

§ 21. Why government studied.—All of the foregoing description of government, which could be expanded into volumes, shows on its face the reasons why it is not only advisable but necessary to possess an understandable acquaintance of the political institutions of one's native land. While as Mabini points out, experience is one prime factor determining the success of government, yet as he also states theoretical knowledge is another requisite. The Philippines are in a fortunate position in this respect, in that, the government is in a formative not a moribund condition. The Philippine citizen can thus delve into history, analyze the institutions of all states, sift the bad and inapplicable from the good and applicable, and create therefrom a Philippine State. This transplantation is exactly what Japan has done. It is a wise policy, because as some one has well said centuries of time are gained; for example, it is not necessary to begin with animal transportation and pass through eons of time to the electrical age, but the latter can be used almost at once.

It is needful therefore that the Philippine citizen should have an intelligent knowledge of the general principles of free government. He must understand the present nature of his own government which touches so many of the big and little things of his life. He must be in a position to improve this government through the force of public opinion, the civilized way. He must learn respect for law. He should insist upon wise reforms so that the

[73] Le Roy's English Translation of Mabini's "Manifesto," published in XI Am. Hist. Rev., 1906, p. 858. See also Mabini's letter to General Bell of Aug. 31, 1900.

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uncivilized way, the right of revolution need not be called upon. He must pass on to his less fortunate brother the lessons he has learned. He must be in a position to exercise the right of suffrage, to discuss public questions intelligently, and to perform the duties of public office as a public trust. He will find in the course of his studies that the science of government is not easy of comprehension or application, for as the highest judicial tribunal of the world has said "The science of government is the most abstruse of all sciences." [74]

It is true that

"Each petty hand
"Can steer a ship becalm'd; but he that will
Govern and carry her to her ends, must know
His tides, his currents, how to shift his sails;
What she will bear in foul, what in fair weathers;
Where her springs are, her leaks, and how to stop 'em;
What strands, what shoals, what rocks do threaten her."

Ben Jonson: Catiline, Act iii. Sc. 1.

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[74] Anderson *v.* Dunn (1821) 6 Wheat. 204, 226, 5 L. Ed. 242.

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CHAPTER 2.

PRE-SPANISH GOVERNMENT.

§ 22. General conditions.
23. Morga's description of the native government.
24. Form of government.
25. The barangay.
26. Inter-group relations.
27. Social classes.
28. Legislation.
29. Contents of laws.
30. Judicial procedure.
31. Defects of organization.
32. Degree of civilization.

§ 22. General conditions.[1]—The inhabitants of the Philippines possessed a culture of their own prior to the coming of the Spaniards to the islands. Those along the coasts were the most advanced in civilization. Their material wealth was considerable. The chief occupations were agriculture, fishing, weaving, some manufacturing, and trade both interisland and with the mainland, generally in the form of barter. They were expert navigators. They used standard weights and measures. The year was divided into twelve lunar months. They had

[1] Condensed from James A. Robertson, Lecture before the Philippine Academy, Jan. 7, 1914, an article by him in the Cablenews-American Yearly Review Number, 1911, p. 22, and an article by him in 6 Journal of Race Development, Oct., 1915, pp. 156-158; Jagor, Travels in the Philippines, Eng. Ed., 1875, p. 151; Forbes-Lindsay, America's Insular Possessions, Vol. II, p. 86; Loarca, *Relación de las Islas Filipinas,* 1582, Blair and Robertson, The Philippine Islands, Vol. V, p. 165; José Maria Pavon y Aranguru, *Las Antiguas Leyendas de la Isla de Negros,* 1838, recovered by Dr. James A. Robertson, in course of publication in English.

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a peculiar phonetic alphabet,[2] wrote upon leaves, and had a primitive literature. "The majority of the people are said to have been able to read and write." [3] Their religion approached the animistic with a vague belief in a supreme deity, but filled with superstition.

§ 23. Morga's description of the native government.—It is necessary to rely chiefly upon the rather uncertain information given by the Spanish writers. Of these, Antonio de Morga, a high royal official in the government service for a number of years around about the year 1600, is admittedly the most reliable chronicler of the conditions existing in those early days.[4] In Rizal's edition of Morga's "Sucesos de las Islas Filipinas" it is said:

[2] "The Tagálogs, Visayans, Pampangans, Pangasinans, Ilocanos, and probably other tribes, made use of an alphabet, which can properly be called a Filipino national alphabet, inasmuch as with slight differences it was in universal use at that time (arrival of Spaniards), and was continued in use . . . up to ten years ago." Dr. T. H. Pardo de Tavera, quoted in Wright, A Handbook of the Philippines, p. 138. Also the Sambals, the Mañgyans, and the Tagbanuas. "There were eight distinct forms of the ancient Malay alphabet in use in the Philippines in the pre-Spanish time, not to mention the accidental differences due to the greater or less ability of the transcribers, and to the different taste and style of each of them." Norberto Romualdez, The Pre-Spanish Alphabets used by the Filipino peoples, a lecture before the Philippine Academy, November 10, 1914.

[3] "As early as the end of the fifteenth century they (the Moros) could read and write." Najeeb M. Saleeby, Studies in Moro History, Law, and Religion, p. 63.

[4] Morga's account is much more definite and complete than that of Legaspi, the first Spanish Governor-General, in his Relation of the Philippine Islands and of the character and conditions of their inhabitants, 1569, in which he states—"The inhabitants of these islands are not subjected to any law, king, or lord. Although there are large towns in some regions, the people do not act in concert or obey any ruling body; but each man does whatever he pleases, and takes care only of himself and of his slaves. He who owns most slaves, and the strongest, can obtain anything he pleases. No law binds relatives,

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"There were no kings or lords throughout these islands who ruled over them as in the manner of our kingdoms and provinces; but in every island, and in each province of it, many chiefs were recognized by the natives themselves. Some were more powerful than others, and each one has his followers and subjects, by districts and families; and these obeyed and respected the chief. Some chiefs had friendship and communication with others, and at times wars and quarrels.

"These principalities and lordships were inherited in the male line and by succession of father and son and their descendants. If these were lacking, then their brothers and collateral relatives succeeded. Their duty was to rule and govern their subjects and followers, and to assist them in their interests and necessities. What the chiefs received from their followers was to be held by them in great veneration and respect; and they were served in their wars and voyages and in their tilling, sowing, fishing, and the building of their houses. To these duties the natives attended very promptly, whenever summoned by their chief. They also paid the chiefs tribute (which they called *buiz*), in varying quantities, in the crops that they gathered. The descendants of such chiefs, and their relatives, even though they did not inherit the lordship, were held in the same respect and considera-

parents to children, or brother to brother. No person favors another, unless it is for his own interests; on the other hand, if a man, in some time of need, shelters a relative or a brother in his house, supports him, and provides him with food for a few days, he will consider that relative as his slave from that time on, and is served by him. They recognize neither lord nor rule; and even their slaves are not under great subjection to their masters and lords, serving them only under certain conditions, and when and how they please." Vol. III, Blair and Robertson, p. 54. Dr. Robertson also states that Father Juan de Plasencia's "method of investigation was along proper lines and made in a commendable spirit." 6 Journal of Race Development, Oct., 1915, p. 158.

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tion. Such were all regarded as nobles, and as persons exempt from the services rendered by the others, or the plebeians, who were called *timaguas* (Timawá-Rizal). The same right of nobility and chieftainship was preserved for the women, just as for the men. When any of these chiefs was more courageous than others in war and upon other occasions, such a one enjoyed more followers and men; and the others were under his leadership, even if they were chiefs. These latter retained to themselves the lordship and particular government of their own following, which is called *barangai* among them. They had *datos* and other special leaders (*mandadores*) who attended to the interests of the *barangay*.

"The superiority of these chiefs over those of their *barangai* was so great that they held the latter as subjects; they treated these well or ill, and disposed of their persons, their children, and their possessions, at will, without any resistance, or rendering account to anyone. For very slight annoyances and for slight occasions, they were wont to kill and wound them, and to enslave them. It has happened that the chiefs have made perpetual slaves of persons who have gone by them, while bathing in the river, or who have raised their eyes to look at them less respectfully and for other similar causes. . . .

"There are three conditions of persons among the natives of these islands, and into which their government is divided: the chiefs, of whom we have already treated; the *timaguas,* who are equivalent to plebeians; and slaves, those of both chiefs and *timaguas.*" [5]

§ 24. Form of government.—The family has ever been "the primal unit of political society, and the seed bed of all larger growth of government." It exists under the absolute sovereignty of the father. In time the group

[5] Rizal's Edition of Antonio de Morga, *Sucesos de las Islas Filipinas,* 1609, quoted in XVI Blair and Robertson, pp. 119-121.

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broadens into the "house" or "gens" over which a chief kinsman rules.[6] It was at this stage that society stood in remote Philippine life. The family extended to include distant relatives and thus constituting a *barangay* and even a confederation of *barangays,* was the unit. The patriarchal form of government was thus prevalent and fundamental, but this had developed as was natural into a near semblance to the aristocratic form, with some monarchical tendencies. As said by Father Juan Francisco de San Antonio, rewriting with additions the relation of Father Juan de Plasencia: "These Indians were not so lacking in prudence in the olden time that they did not have their economic, military and political government, those being the branches derived from the stem of prudence. Even the political government was not so simple among all of them that they did not have their architectonic rule—not monarchic, for they did not have an absolute king; nor democratic, for those who governed a state or village were not many; but an aristocratic one, for there were many magnates (who are here called either *maguinoos* or *datos*), among whom the entire government was divided." [7]

§ 25. **The barangay** formed the governmental unit. The word "barangay," corrupted from "balangay," means a boat, thus confirming the theory as to the immigration of the Malays to the Philippines. A group of people consisting of a family with relatives and slaves traveling from island to island in a "balangay," in time the group itself came to be known as a "balangay" or "barangay." "The term *balangay,* or boat, still applied to the villages, recalls the time when these mariners, encamping on the beach, continued to lead much the same life as when scouring the high seas in their *praus.* As

[6] See Wilson, The State, pp. 5, 6, 13.

[7] *Crónicas,* 1738, XL Blair and Robertson, pp. 347-349.

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was the case with the sampans, or junks, of the more recent Chinese settlers every *balangay* became the cradle of a Malay colony." [8]

The number of houses in these communities was sometimes even less than thirty, and again as many as one hundred,[9] while as observed by Salcedo in Ilocos the number of inhabitants reached as high as seven thousand.[10] A multitude of these "Balangays" would be found on every island, with a number of them clustering together for mutual protection.

These independent clans of "Balangay" were retained by the Spaniards. They still exist as "barrios" (wards).

§ 26. Inter-group relations were naturally restricted. Extent of jurisdiction depended mainly upon strength and valor. Such relations would therefore be of the most primitive nature and would relate to war or questions of marriage.[11] However, the *barangays* must inevitably in course of time come to have communication

[8] Elisée Reclus, The Earth and Its Inhabitants (Oceanica), 1892 Ed. by Keane, pp. 254, 255. See further Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, p. 157.

[9] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176. Father San Antonio states that each "*barangay* consisted of about one hundred persons, more or less." *Crónicas,* 1738, XL Blair and Robertson, pp. 347-349.

[10] T. H. Pardo de Tavera, Census, 1903, Vol. I, pp. 324, 325.

[11] "The *maharlicas* could not, after marriage, move from one village to another, or from one *barangay* to another, without paying a certain fine in gold, as arranged among them. This fine was larger or smaller according to the inclination of the different villages, running from one to three taels and a banquet to the entire *barangay.* Failure to pay the fine might result in a war between the *barangay* which the person left and the one which he entered. This applied equally to men and women, except that when one married a woman of another village, the children were afterwards divided equally between the two *barangays.*" Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176, 178, 179.

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with each other and be joined by ties of kinship and friendship. They might help one another in their wars or unite under a common ruler for this purpose. So must there have been councils, alliances, and pacts. One chief might come to dominate others less powerful and thus have dominion over several *barangays*.[12]

There is consequently evidence that *barangays* were grouped together in tiny and loose confederations, including about as much territory as the present towns. Rizal in his edition of Morga appends this note: "This fundamental agreement of laws, and this general uniformity, prove that the mutual relations of the islands were widespread, and the bonds of friendship more frequent than were wars and quarrels. There may have existed a confederation, since we know from the first Spaniards that the chief of Manila was commander-in-chief of the Sultan of Borneo. In addition, documents of the twelfth century that exist testify the same thing.—Rizal." [13] There is also ground to believe that there were "First," "Second," and "Third" Chiefs—thus indicating an upward progression of fealty.[14]

§ 27. Social classes.[15]—Society was divided into the three classes of nobles, freemen, and slaves.

The nobles were called "Datu" (Dato) or "Raga"

[12] Plasencia, *id.*, pp. 173-176; Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 82-84.

[13] Rizal's edition of Antonio de Morga, *Sucesos de las Islas Filipinas*, 1609, XVI Blair and Robertson, p. 121.

[14] Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, p. 152; Robertson, The Evolution of Representation in the Philippine Islands, 6 Journal of Race Development, Oct., 1915, p. 157.

[15] See generally Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, pp. 153-157; Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 82-87; Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176.

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(Raja)—meaning "Chief," "Monarch," etc.[16] These titles were acquired either by inheritance or by individual valor, wealth, or energy. Diego de Artieda, writing in 1573, said that "The *Datos* boast of their old lineage." [17] These chiefs had great powers; they exercised despotic authority; and they were treated with the utmost respect and reverence. "The subject who committed any offense against them, or spoke but a word to their wives and children, was severely punished." [18] The chiefs were the captains in the wars, the law givers, the judges, and had control over land, fishing, and trade. In them were united all the usual forces of government.

The freemen were called "Timawa" (in Visayan) or "Maharlika" (in Tagalog), meaning "plebeian" or "free." They were the descendants and relatives of the nobles who did not inherit the rank, together with the emancipated slaves and their descendants. They paid no tax or tribute to the chief, but had to accompany him in war at their own expense.[19]

The slaves, among the Visayans, were of three classes: the "Ayuey," the "tumarampuk," and the "tumataban." Among the Tagalogs, there were two classes: the "Aliping-Namamahay" and the "Aliping-Saguiguilir." These slaves, and usually their families according to their class, had to work a varying proportion of time for their masters. The usual sale price was one or two *taels* of gold

[16] For the etymological derivations of the terminology used in this and other sections, see Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, pp. 149-180. Various other names were used by the early Spanish writers to describe these classes.

[17] Relation of the Western Islands called *Filipinas*, III Blair and Robertson, p. 197.

[18] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176.

[19] Plasencia, *Id.*

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(six or twelve pesos); the "Aliping-Namamahay"—termed by Father Plasencia "Commoners"—could not be sold.

§ 28. **Legislation.**—The early historians agree that "the natives' laws throughout the islands were made in the same manner, and they followed the traditions and customs of their ancestors, without anything being written. Some provinces had different customs than others in some respects. However, they agreed in most, and in all the islands generally the same usages were followed." [20] Proof, in the nature of the recent discovery of the Penal Code of Calantiao, 3rd Chief of Panay, written in 1433, in connection with the fact that there was an alphabet and letters, shows that in addition to tradition and custom there existed written laws.[21] Laws were made and promulgated by the chief, after consultation with the elders.[22] They were "observed with so great exactness that it was not considered possible to break them in any circumstance." [23] Professor Gareis well says that all "such primitive legislation, sprung from the necessities of the moment, and is necessarily unsystematic." [24] But in the opinion of former Secretary of Finance and Justice Araneta, "these primitive laws could very favorably be compared with those of the Greeks and Romans." [25]

The usages and laws of the natives continued to be ob-

[20] Rizal's edition of Morga, *Sucesos de las Islas Filipinas,* 1609, XVI Blair and Robertson, pp. 119-121.

[21] See José Maria Pavon y Aranguru, *Las Antiguas Leyendas de la Isla de Negros,* 1838, recovered by Dr. James A. Robertson.

[22] According to tradition the laws were supposed to have been given by the Goddess Lubluban. Loarca, *Relación de las Islas Filipinas,* V Blair and Robertson, p. 141.

[23] Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, p. 84.

[24] Gareis, Science of Law (1905), p. 77.

[25] Araneta, Penal Legislation of the Philippine Islands, III Philippine Law Review, February, 1914, pp. 175, 178.

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served and respected during the first years of Spanish sovereignty.[26] Survivals can even be found at the present time.

§ 29. Contents of laws.—The laws covered many of the subjects which we find in the modern codes. To indicate only a few of the most striking points in the substantive law. "One was the respect of parents and elders, carried to so great a degree that not even the name of one's father could pass the lips, in the same way as the Hebrews (regarded) the name of God." [27] Even after reaching manhood and even after marriage the son was under a strict obligation to obey his father and mother.[28] The people were accustomed to adoption.[29] Marriage had reached the stage of mutual consent.[30] Marriage ceremonies approaching the religious and including use of the proverbial rice were more or less elaborate, according to rank. Husband and wife were equal socially and in control of their property. Property was acquired principally by occupation, but also by gift, purchase, and succession. Thus Father Plasencia states: "The lands which they inhabited were divided among the whole *barangay,* especially the irrigated portion, and thus each one knew his own. No one belonging to another *barangay*

[26] Araneta, *id.,* citing Plasencia, XVI Blair and Robertson, p. 321.

[27] Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 84-86.

[28] Calderón, cited by Romualdez in A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, pp. 163, 164.

[29] Juan Francisco de San Antonio, O. S. F., *Crónicas,* 1738, XL Blair and Robertson, pp. 371, 372.

[30] Judge Lobingier, The Primitive Malay Marriage Law, XII, American Anthropologist, April-June, 1910, p. 250, is of the opinion that the Malays had only arrived at the second stage of wife purchase, but Judge Romualdez in his article, *id.,* pp. 160-163, has proved the contrary. See Loarca, V Blair and Robertson, pp. 153-161, for a general account of marriage.

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would cultivate them unless after purchase or inheritance. The lands on the *tingues,* or mountain-ridges, are not divided, but owned in common by the *barangay.* Consequently, at the time of the rice harvest, any individual of any particular *barangay,* although he may have come from some other village, if he commences to clear any land may sow it, and no one can compel him to abandon it." [31] As to inheritances, "In regard to heirs, all the legitimate children equally inherited all the property of their parents. If there were no legitimate children, then the nearest relatives inherited. If one had two or more children by two wives, all legitimate, each child inherited what belongs to his mother, both of the wealth of her time, and of the profits made from it, which could have belonged to her. As to the dowry, it is inferred that the child's grandparents received it, and spent it at the time of the wedding. If there were other children who were not legitimate, who had been had by a free woman, they had one-third of the property, and the legitimate children the other two-thirds. But in case that there were no legitimate children, then the illegitimate children of a free woman were the absolute heirs. Some property was given to the children of slave women according to the wishes of the legitimate heirs, and the mother became free, as has been stated above—as did the children also, in the manner already explained." [32] Contracts were strictly fulfilled. The Chinese writer Wang Ta-yuan in a book of 1349 says: "The natives and the traders having agreed on prices, they let the former carry off the goods and later on they bring the amount of native products agreed upon. The traders trust them, for they never

[31] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176, 178, 179.

[32] Juan Francisco de San Antonio, O. S. F., *Crónicas,* 1738, XL Blair and Robertson, pp. 355-358, 371, 372.

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fail to keep their bargains." [33] In fact, non-performance of a contract was severely punished.[34] Partnerships were formed and the respective obligations of the partners enforced. Thus, according to Loarca, "When two persons formed a partnership by putting in an equal share of the capital, and one of them went away to trade with the whole capital but was captured by their enemies, the partner who remained was bound to redeem his partner, by paying the price of the redemption. The captive was thus discharged not only from the responsibility for the capital of his partner but also for the money paid by the latter for his redemption. But if the partner who went away to trade, lost the money in gambling or women, he was compelled to pay the money thus misappropriated and his liability attached to his children. If the amount was so big that he was not able to refund it within the time agreed upon, then he and one-half of his children became the slaves of his partner, so that if he had two children, one of them became a slave. If afterwards, the free child was able to pay his father's debt, all of them were set free." [35]

The penal law was the most extensive. Penalties were severe. According to the Penal Code of Calantiao, the penalties were death, incineration, mutilation of the fingers, slavery, flagellation, being bitten by ants, swimming for a fixed time, and other discretionary penalties. Father Plasencia writes, "They had laws by which they condemned to death a man of low birth who insulted the daughter or wife of a chief; likewise witches, and others

[33] Craig's edition of an "Unpublished translation, by Hon. W. W. Rockhill, of a Chinese book of 1349, by Wang Ta-yuan, Description of the Barbarians of the Isles (Tao-i-chih-lio)."

[34] José María Pavon y Aranguru, *Las Antiguas Leyendas de la Isla de Negros*, 1838, recovered by Dr. James A. Robertson.

[35] *Relación de las Islas Filipinas,* V Blair and Robertson, pp. 183, 185.

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of the same class. They condemned no one to slavery, unless he merited the death-penalty. As for the witches, they killed them, and their children and accomplices became slaves of the chief, after he had made some recompense to the injured person. All other offenses were punished by fines in gold, which if not paid with promptness, exposed the culprit to serve, until the payment should be made, the person aggrieved, to whom the money was to be paid." [36] Wide distinctions in punishment were made because of rank.[37] Yet notwithstanding the seemingly cruel and illogical penalties, "The scale of penalties and the manner of their execution stand out in bold relief not only as against Greek and Roman laws but also as against prior and contemporaneous Spanish laws, and the proceedings adopted to determine the author of the theft, in case he was not known, compare favorably with the tortures to which the suspected persons were subjected under the Fuero Juzgo and the Partidas." [38] Not to mention the various punishable acts which likewise compare favorably with similar provisions even now,[39] the weakest side of the penal system related to tolerance of crimes against chastity.[40]

[36] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 179, 180, 181.

[37] Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 84-86.

[38] Araneta, Penal Legislation of the Philippine Islands, III Philippine Law Review, Feb., 1914, pp. 175, 179.

[39] See José María Pavon y Aranguru, *Las Antiguas Leyendas de la Isla de Negros,* 1838, recovered by Dr. James A. Robertson, and Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, 149-180, for a minute description of the punishable acts.

[40] Thus according to Father San Antonio, O. S. F., *Crónicas,* 1738, pp. 355-358, "Adultery was not punishable corporally, but the adulterer paid a certain sum to the aggrieved party; and that was sufficient so that the honor of the latter was restored and his anger re-

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§ 30. Judicial procedure.—The chief, assisted at times by old men of his *barangay* or by a neighboring chief, acted as judge in all cases of litigation between his subjects.[41] He heard the witnesses and judged the case according to usage and law. When the litigants belonged to different *barangays,* or the controversy was between two chiefs and even at other times, arbiters were chosen, who gave judgment.[42]

Trials were public. "Investigations made and sentences passed by the dato must take place in the presence of those of his *barangay.*" [43] Oaths were administered. The oath taken by the *principales* of Manila and Tondo in promising obedience to the Catholic Kings of Spain in 1571, was as follows: "May the sun divide us in halves, the alligators bite us, the women refuse us their favors and refuse to love us well, if we do not keep our word." Appeals were recognized.[44]

moved. They paid no attention to concubinage, rape, and incest, unless the crime were committed by a timawa on a woman of rank. On the contrary, the committal of such sins openly was very common, for all of them were very much inclined to this excess; but I cannot find that they were addicted to the sin against nature in the olden time." But Father Ordóñez de Cevallos, *Viajes del Mundo,* 1614, p. 232, says: "The women are extremely very chaste, and lewdness is never seen in them, nor any disloyalty to their master; on the contrary, they are very generally virgins, and those who are married know not husband but one; and in spite of this, God, in His divine secrets, multiplies them greatly; and some towns are found to have two thousand five hundred inhabitants and to have over two thousand boys and girls, and yet none of these children is found to be illegitimate."

[41] T. H. Pardo de Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 324, 325.

[42] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176, 178, 179.

[43] Plasencia, *id.*

[44] Two Relations by Juan de Plasencia, O. S. F., 1589, VII Blair and Robertson, pp. 173-176, 178, 179. Morga states otherwise—"sen-

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The usual procedure is described by Father Colin as follows:

"For the determination of their suits, both civil and criminal, there was no other judge than the said chief, with the assistance of some old men of the same *barangay*. With them the suit was determined in the following form: They had the opponents summoned, and endeavored to have them come to an agreement. But if they would not agree, then an oath was administered to each one, to the effect that he would abide by what was determined to be done. Then they called for witnesses, and examined summarily. If the proof was equal (on both sides), the difference was split; but, if it were unequal, the sentence was given in favor of the one who conquered. If the one who was defeated resisted, the judge made himself a party to the cause, and all of them at once attacked with the armed band the one defeated, and execution to the required amount was levied upon him. The judge received the larger share of this amount, and some was paid to the witnesses of the one who won the suit, while the poor litigant received the least.

"In criminal causes there were wide distinctions made because of the rank of the murdered and the slain; and if the latter were a chief all his kinsmen went to hunt for the murderer and his relatives, and both sides engaged in war, until mediators undertook to declare the quantity of gold due for that murder, in accordance with the appraisals which the old men said ought to be paid according to their custom. One half of that amount belonged to the chiefs and the other half was divided among the wife, children, and relatives of the deceased." [45]

tence was observed and executed without any further objection or delay." Rizal's edition, *Sucesos de las Islas Filipinas,* XVI Blair and Robertson, pp. 119-121.

[45] Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 84-86.

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The procedure in cases of theft is given by Father Colin as follows:

"In a matter of theft, if the crime were proved, but not the criminal, and more than one person was suspected, a canonical clearance from guilt had to be made in the following form. First, they obliged each person to put in a heap a bundle of cloth, leaves, or anything else that they wished, in which they might discover the article stolen. If the article stolen was found in the heap, at the end of this effort, then the suit ceased; if not, one of the three methods was tried. First, they were placed in the part of the river where it is deepest, each one with his wooden spear in his hand. Then at the same time they were all to be plunged under the water, for all are equal in this, and he who came out first was regarded as the criminal. Consequently, many let themselves drown for fear of punishment. The second was to place a stone in a vessel of boiling water, and to order them to take it out. He who refused to put his hand into the water paid the penalty for the theft. Thirdly, each one was given a wax candle of the same wick, and of equal size and weight. The candles were lighted at the same time and he whose candle first went out was the culprit." [46]

§ 31. Defects of organization are not hard to ascertain. "The weakest side of the culture of the early Filipinos was their political and social organization.

[46] Francisco Colin, S. J., Native Races and their Customs, 1663, XL Blair and Robertson, pp. 84-86. See also Bowring, A Visit to the Philippines, pp. 123, 124. "Tradition has handed down to us similar methods, as that of masticating uncooked rice, which is still resorted to by the boys of Leyte in their games upon those suspected of having done a reprehensible act. The one who produced the thickest saliva was considered the guilty one for the reason that persons tormented with remorse can not usually produce much saliva." Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, p. 178.

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. . . Their state did not embrace the whole tribe or nation; it included simply the community. Outside of the settlers in one immediate vicinity, all others were enemies or at most foreigners." (David P. Barrows.) [47] "Their political and social organization was deficient in cohesion. There were no well-established native states but rather a congeries of small groups something like clans." (E. G. Bourne.) [48] "The sentiment of national unity or solidarity did not exist." (Apolinari Mabini.) [49] Political organization and centralized, extended state authority was lacking.

§ 32. Degree of civilization.—Having in mind the foregoing description of general pre-Spanish conditions and the governmental organization in vogue at that time, the identical conclusion of able writers of different nationalities would seem to be just.[50] "The inhabitants of these islands were by no means savages, entirely unreclaimed from barbarism before the Spanish advent in the 16th century. They had a culture of their own." (John Foreman.) [51] They "had already reached a considerable degree of civilization at the time of the Spanish conquest." (Ferdinand Blumentritt.)[52] "Upon the arrival of the Spaniards, they found the ancestors of the present-day Filipinos in possession of considerable culture, which is somewhat comparable to that of some of the mountain peoples of to-day." (Dr. James A. Robertson.) [53] "The Filipino people, even in pre-historic times, had already

[47] History of the Philippines, 2d Ed., 1907, p. 102.

[48] Historical Introduction to Blair and Robertson, pp. 38, 39.

[49] *La Revolucion Filipina*, p. 8.

[50] Some of the Spanish writers were, however, inclined to emphasize over much the bad qualities of the "Indians."

[51] The Philippine Islands, 3rd Ed., 1906, p. 166.

[52] Philippine Information Society, The Philippine Problem, May 1, 1901, pp. 9, 13.

[53] Cablenews-American Yearly Review Number, 1911, p. 22.

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shown high intelligence and moral virtues; virtues and intelligence clearly manifested in their legislation, which, taking into consideration the circumstances and the epoch in which it was framed, was certainly as wise, as prudent, and as humane, as those of the nations then at the head of civilization." (Judge Romualdez.) [54]

In fine, to make a broad and pertinent comparison, if the condition of the natives of the Philippines and their system of government on the date Magellan landed in the islands be contrasted with life among the inhabitants of Mexico, Cuba, and the South American countries now sovereign, on the date entered by Spain, little difference in degree of civilization is seen. Or more generally stated, there is nothing to indicate that the people of the Philippines had such innate characteristics as implied inferior capacity, but on the contrary it is clear that they had the same relative civilization as has been shown in the early history of all progressive races.

[54] Romualdez, Pre-historic Legislation of the Philippines, I Philippine Law Journal, Nov., 1914, p. 179. Marcelo H. del Pilar, prologue to *Filipinas en las Cortes,* writes that "The Filipino people, before their annexation to Spain, had their own civilization, their own writing, their own industries. . . ." (p. 11.)

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Blair and Robertson, The Philippine Islands, 1493-1898, especially Legaspi, 1569, III, 54; Artieda, 1573, III, 197, Loarca, 1582, V. 141-185; Plasencia, 1589, VII, 173-181; Rizal's edition of Antonio de Morga, *Sucesos de las Islas Filipinas,* 1609, quoted in XVI, 119-121; Colin, 1663, XL, 82-87; San Antonio, 1738, XL, 347-372.

José Maria Pavon Aranguru, *Las Antiguas Leyendas de la Isla de Negros,* (1838), recovered by Dr. James A. Robertson, in course of publication in English.

Norberto Romualdez, A Rough Survey of the Pre-Historic Legislation of the Philippines, I Philippine Law Journal, November, 1914, p. 149.

Gregorio Araneta, Penal Legislation of the Philippine Islands, firstly, in Prehistoric Periods; and, secondly, before the Penal Code was in force, III Philippine Law Review, February, 1914, p. 175.

Charles S. Lobingier, The Primitive Malay Marriage Law, XII American Anthropologist, April-June, 1910, p. 250.

Austin Craig, A Thousand Years of Philippine History Before the Coming of the Spaniards (1914).

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CHAPTER 3.

THE SPANISH ADMINISTRATION.

§ 33. Conquest.
34. Colonial policy.
35. Relations with Spain.
36. Laws extended.
37. The Governor-General.
38. Central advisory bodies.
39. Central administrative agencies.
40. Provincial administration.
41. Municipal administration.
42. The judiciary.
43. Ecclesiastical administration.
44. Public finances.
45. Commerce.
46. Education.
47. Public order.
48. Filipino participation.
49. Judgment.

§ 33. Conquest.[1]—The medieval history of the Philippines begins with the expedition of Miguel Lopez de Legaspi and Andrés de Urdaneta, sailing from Mexico in

[1] Jagor, a reliable German writer, in his Travels in The Philippines, says on this subject: "Legaspi first of all annexed Cebú, and then Panay; and six years later, in 1571, he first subdued Manila, which was at that time a village surrounded by palisades, and commenced forthwith the construction of a fortified town. The subjection of the remaining territory was effected so quickly that, upon the death of Legaspi (in August, 1572), all the western parts were in possession of the Spaniards. Numerous wild tribes in the interior, however, the Mohammedan states of Mindanao and the Sulu group, for example, have to this day preserved their independence. The character of the people, as well as their political disposition, favored

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1564. "The work of Legaspi during the next seven years entitles him to a place among the greatest of colonial pioneers." [2] The government of Cebu was organized, Manila was founded, Luzon and other islands were overrun, and the sovereignty of Spain was proclaimed. The social disintegration of the natives facilitated conquest; the vagueness of their religious belief made conversion easy; tact and diplomacy were the principal weapons of the Spaniards. By the beginning of the seventeenth century Spanish rule can be said to have been fairly established. Much of the Philippines, however, particularly the Moro country, was never more than nominally subject to Spain.[3]

the occupancy. There was no mighty power, no old dynasty, no influential priestly domination to overcome, no traditions of national pride to suppress. The natives were either heathens, or recently proselytized superficially to Islamism, and lived under numerous petty chiefs, who ruled them despotically, made war upon one another, and were easily subdued. One such community is called Barangay; and it forms to this day, though in a considerably modified form, the foundation of the constitutional laws. The Spaniards limited the power of the petty chiefs, upheld slavery, and abolished hereditary nobility and dignity, substituting in its place an aristocracy created by themselves for services rendered to the state; but they carried out all these changes very gradually and cautiously." (pp. 357-359, Eng. Ed.) See further Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 311-313; Robertson, Legazpi and Philippine Colonization, Rep. Am. Hist. Assoc. 1907, pp. 143-156.

[2] Bourne, Introduction to Blair and Robertson, The Philippine Islands, p. 32. The *adelantado* Legaspi was "a model of courage, prudence, and humane moderation." Barrows, The Governor-General of the Philippines under Spain and the United States, XXI Am. Hist. Rev., Jan., 1916, p. 289.

[3] "The Sulu sultanate remained practically independent for four hundred and twenty-five years. Its decline was not caused by national retrogression or political dissension, but by the hostility and aggression of its adversary. . . . The tenacity with which the Sulus resisted Spanish domination, their obdurate opposition and bravery in battle, and their obstinate passive resistance in peace,

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The government inaugurated in the Philippines was simple in structure. Legaspi became the first Governor-General and Captain-General, with the title of *adelantado*. *Encomiendas*[4] (a grant of the people or of the land and

baffled all Spanish efforts to subvert their political organization or gain a single point of advantage without paying too dearly for it. The Sulus succeeded at last in inaugurating their candidate as Sultan of Sulu. Their laws and the administration of their internal affairs were not interfered with. The religion, social conditions, national usages and customs were unaffected by any change whatsoever. Spanish influence and jurisdiction did not extend beyond the limits of the garrison and no material reform or progress reached the Moro community through that channel. No effort was made by Spain to educate the Sulus and no adequate measure was proposed by her governors which was applicable to the needs of the Sulus and acceptable to their ideas. The Sulus felt that there was a strong inclination on the part of the Spanish Government or some of its recognized agents to change their religion and destroy their national unity, and consequently they never had complete confidence in Spanish officers and representatives and repulsed every influence that tended to establish close relations between them and the Christians of the Spanish garrison. No tax or tribute was collected from the Sulus, and their territory was exempted from the operation of the laws of the Philippine Islands. Sulu imports could come in Sulu craft free of duty and unhampered by any vexatious regulation." Saleeby, The History of Sulu, pp. 133, 139. "It is a striking instance of the irony of fate that, just as modern weapons have turned the scale in favor of the Spaniards in this long struggle, and brought the Moros within measurable distance of subjection, when only one more blow required to be struck, Spain's Oriental Empire should suddenly vanish in the smoke of Dewey's guns." Sawyer, The Inhabitants of the Philippines, p. 364.

[4] "Some of these expeditions in search of conquest were enterprises undertaken for private gain, others for the benefit of the governor; and such service was rewarded by him with grants of lands, carrying an annuity, offices, and other benefits (*encomiendas, oficios y aprovechamientos*). The grants were at first made for three generations (in New Spain for four), but were very soon limited to two, when Di los Rios pointed this out as being a measure very prejudicial to the Crown, 'since they were little prepared to serve his Majesty, as their grandchildren had fallen into the most extreme poverty.' After

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people) were allotted. The native *barangays* were recognized.

Spanish title rested on "discovery" confirmed by use and conquest.

§ 34. Colonial policy.—Three anomalous and repugnant motives induced Spain to retain the Philippines, an unselfish desire for religious conversion, a selfish desire for commerce, and a mixed desire for political aggrandizement. King Philip II writes to Velasco: "You shall stipulate that they try to bring some spice in order to make the essay of that traffic." But Legaspi was ordered to show the greatest respect to the five Augustinian friars who accompanied the expedition, "since you are aware that the chief thing sought after by His Majesty is the increase of the Holy Catholic faith and the salvation of the souls of these infidels." [5] Such motives became the bases of the Spanish colonial policy. As a result, nothing short of the permanent retention of the Philippines with unqualified retention of power was ever seriously considered.

the death of the feoffee the grant reverted to the state; and the governor thereupon disposed of it anew. The whole country at the outset was completely divided into these livings, the defraying of which formed by far the largest portion of the expenses of the kingdom. Investitures of a similar nature existed, more or less, in a territory of considerable extent, the inhabitants of which had to pay tribute to the feoffee; and this tribute had to be raised out of agricultural produce, the value of which was fixed by the feudal lord at a very low rate, but sold by him to the Chinese at a considerable profit." Jagor, Travels in the Philippines, Eng. Ed., p. 360.

[5] Quoted in McKinley, Island Possessions of the United States, pp. 204, 205. The Spanish King, according to Argensola, (A New Collection of Voyages and Travels into Several Parts of the World, compiled by John Stevens, London, 1711) was governed by a religious motive, and we read that "when worldly Interests have proposed the quitting of those Dominions . . . that most prudent Monarch answer'd that the Philippines should be maintained in the same manner they were," to facilitate the propagation of the Gospel.

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It is to the credit of Spain that in thus imposing herself on an alien people, the native customs and institutions that did not interfere with the course of government were respected. The laws of the Indies were protective to a high degree. The chiefs of the *barangays* were left in authority.[6] All changes came gradually and cautiously. Innovations were either to suppress heathen vices and practices, or to reduce the people to village life in order to provide a means for conversion, or training in industry

"For what would the Enemies of Christ say, if they perceived that the Philippine Islands were left destitute of the true Light, and its Ministers to propagate it, because they did not produce rich Metals and other Wealth, like the Rest of the fruitful Islands in Asia and America?" "It has generally been said that Spanish colonization was based on religion. This is not the case. It was based on commerce." Lecture by James A. Robertson, Early Social and Economic History of Manila, before the Philippine Academy, January 7, 1914. "It is wrong to say, as is so often said or implied, that Spain discovered and afterward maintained her Philippine colony entirely for the purpose of converting lost souls to Christianity. Commercial aims, and above all the political ambitions of an age of discovery abroad and of a period of internal strife in Europe, played a large part in this national enterprise of the sixteenth and seventeenth centuries." Le Roy, Philippine Life in Town and Country, p. 117.

[6] *Recopilación de Leyes,* lib. vi, tit. vii, ley xvi, contains the following in regard to the native chiefs: "It is not right that the Indian chiefs of *Filipinas* be in a worse condition after conversion; rather should they have such treatment that would gain their affection and keep them loyal, so that with the spiritual blessings that God has communicated to them by calling them to His true knowledge, the temporal blessings may be joined, and they may live contentedly and comfortably. Therefore, we order the governors of those islands to show them good treatment and entrust them, in our name, with the government of the Indians, of whom they were formerly the lords. In all else the governors shall see that the chiefs are benefited justly, and the Indians shall pay them something as a recognition, as they did during the period of their paganism, provided it be without prejudice to the tributes that are to be paid us, or prejudicial to that which pertains to their *encomenderos.*" Felipe II, Madrid, June 11, 1594, quoted in XVII Blair and Robertson, pp. 155, 156.

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so that they could support themselves and contribute money to the colonial establishment.[7]

§ 35. Relations with Spain.[8]—Until Mexico revolted from Spain in 1819, the Philippines were in a sense a dependency of Mexico. After that date, the Archipelago was a distinct governmental unit. Included therein were the Philippines as now known and the Ladrone, Caroline, and Pelew Islands.

In Spain, the Philippines were under the general control of the Council of the Indies until 1837. After various experiments, they were placed under the *Ministerio de Ultramar* (Colonial Department) in 1863.[8a] To this Ministry, acting for the Crown, was confided the superior administration of the islands. Among its important powers was the appointment and removal for the Crown of all the high functionaries of the colony. The Minister of the Colonies was assisted by the *"Consejo de Filipinas"* (Council of the Philippines) sitting permanently in Madrid. This body was composed of the subsecretary and directors of the Ministry of *Ultramar* as members *ex-officio* and twelve members selected because of their knowledge of colonial affairs. The Council was consulted by the Minister of the Colonies, could be required to draft decrees, and could initiate and present reforms. It was of little practical utility.

The Philippines, as a colony of the Crown of Spain, except for short periods, did not secure the benefits of the Spanish Constitution. Unlike Cuba and Porto Rico, to which the Constitution was eventually extended, there was an article in the fundamental law providing in effect that

[7] See Bourne, Spain in America, p. 258.

[8] See Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 362, 370; Report of the First Philippine Commission, Vol. I, pp. 72, 73.

[8a] Royal decree of May 20, 1863, San Pedro, *Legislación Ultramarina*, Vol. I, p. 185.

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the Philippine Islands shall be governed by special laws.[9] Consequently, all law for the islands originated in Spain. "The decrees, instructions, and ordinances sent to these islands, both to the Governor and to other tribunals and officials, are the rule for the right government in the islands." [10] The method in vogue was, therefore, in accordance with the provisions of the Laws of the Indies and the Constitution to extend the laws or codes of Spain to the islands by royal decrees.[11] Frequently under the power of *cumplase,* the Governor-General would suspend or disregard royal decrees.

§ 36. Laws extended.[12]—Not to attempt a complete enumeration, particularly of royal orders and decrees, there should be first mentioned, as laws having at

[9] Chief Justice Arellano, Historical Résumé of the Administration of Justice in the Philippine Islands, Report of the Second Philippine Commission, November 30, 1900, p. 234. Article 89 of the last Spanish constitution reads:

"The Colonial provinces shall be governed by special laws; but the Government is authorized to apply to them, with the modifications it may deem advisable and informing the Cortes thereof, the laws enacted or which may hereafter be enacted for the Peninsula.

"Cuba and Puerto Rico shall be represented in the Cortes of the Kingdom in the manner determined by a special law, which may be different for each of the two provinces."

[10] Letters to Felipe IV from Governor Tavora, XXII Blair and Robertson, p. 274.

[11] Conversely stated, no laws were enacted in the Philippines. "Q. How are those laws passed? A. They are made in Madrid, at the initiative of the minister for the colonies in the Cortes, and signed by the Queen. Q. . . . Is no law made by these islands, by the governor-general? A. No law is made here; they come, all, from the office of the minister of the colonies." Testimony of Chief Justice Arellano before the First Philippine Commission, Vol. II, Report of Commission, pp. 20, 21.

[12] See Chief Justice Arellano, Historical Résumé of the Administration of Justice in the Philippine Islands, Report of the Second Philippine Commission, Nov. 30, 1900, pp. 234-241; Lobingier, The Spanish Law in the Philippines, I Philippine Law Review, March 15,

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least suppletory force in the Philippines, *Las Siete Partidas* (The Seven Parts)—a compilation of previous Spanish laws; *Las Leyes de Toro* (The Laws of Toro)—dealing mostly with wills and succession, with some attention to penal law; *Leyes de las Indias* (Laws of the Indies)—a system of colonial legislation; *La Novisima Recopilación* (The New Compilation)—relating to all branches of the law; *Ley de Minas* (Mining Law); the Notarial Law of 1862, put in force in the Philippines in modified form in 1889, with the regulations of the following year; the Spanish Military Code; and the *Ley de Propiedad Intelectual* (Copyright Law). The modern codes and special laws, some of which, at least in parts, survived American Occupation, are, however, much more important in effect. These were the Penal Code, as revised for the islands,[13] coming into force in the Philippines in 1887; the Code of Commerce of 1885, as modified for the islands, extended to the Philippines in 1888; the *Ley Provisional,* dealing, in connection with the Penal Code, with criminal procedure; the *Ley de Enjuiciamiento Criminal* of 1872 (Code of Criminal Procedure), "which, though never in actual force in these islands, was formerly given a suppletory or explanatory effect;" [14]

1912, and Annual Bulletin No. 4, Comparative Law Bureau, Aug. 1, 1911; Lobingier, Modern Civil Law, I Philippine Law Review, May, June, September, November, 1912, January, 1913; Abreu, The Blending of Anglo-American Common Law, with the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, p. 285; Walton's Civil Law in Spain and Spanish America.

[13] The most important new provision was article 11, reading as follows: "The circumstance of the offender being a native, mestizo, or Chinaman shall be taken into consideration by the judges and courts in their discretion for the purpose of mitigating or aggravating the penalties, according to the degree of intent, the nature of the act, and the circumstances of the offended person."

[14] Rakes *v.* The Atlantic, Gulf & Pacific Co. (1907), 7 Phil. 359, 363.

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Ley de Enjuiciamiento Civil (Code of Civil Procedure), effective in 1856, revised in 1881, and extended to the Philippines in 1888; the Civil Code of 1889, except Titles IV and XII of Book I, suspended by the Governor-General, and thus reviving a portion of the Marriage Law of 1870;[15] the *Ley Hipotecaria* (Mortgage Law) of 1889, revised in 1893; the Railway Laws of 1875 and 1877; and the *Ley de Aguas* (Law of Waters) of August 3, 1866. Other Spanish laws have been cited in the Philippine Reports.[16]

These laws have, generally, been praised. The historian Dunham speaks of the *Siete Partidas* as "by far the most valuable monument of legislation, not merely of Spain but of Europe, since the publication of the Roman (Justinian) Code."[17] The Mortgage Law has been described as "a great masterpiece of legislation."[18] The

[15] See *Compilación Legislativa de Ultramar,* Vol. XIV, p. 2740; De la Rama *v.* De la Rama (1903), 3 Phil. 34; Ebreo *v.* Sichon (1905), 4 Phil. 705; Del Prado *v.* De la Fuente (1914), 28 Phil. 23; Ramos, Marriage: Forms, Celebration, and Legal Consequences, pp. 90, 91, 187, 188.

[16] See Laurel, What Lessons may be learned by the Philippine Islands from the legal history of Louisiana, 2 Philippine Law Journal, August, September, 1915.

[17] History of Spain and Portugal, Vol. IV, p. 109. The learned Alonzo Martinez in a speech made at the opening of the Supreme Court of Spain said: "The *Siete Partidas* are undoubtedly in principle and form, by reason of their contents, the clearness of the composition, and the inimitable graceful language and style, an imperishable monument of wisdom, without rival in Europe during the Middle Ages; and, as everything which is superior rules by legitimate right, this code has been in the past and is still the beacon which illuminates and guides the courts, judges, and lawyers through the darkness of our contracted and contradictory civil legislation." Quoted by Chief Justice Arellano in article cited *supra.* "A code of legal principles, which is at once plain, simple, concise, just, and unostentatious to an eminent degree." 2 Kent Comm. 240. See further Altimira in A General Survey of Continental Legal History, Ch. II.

[18] Abreu, The Blending of Anglo-American Common Law, with

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Civil Code has been spoken of "as a monument to Spanish legislative capacity." [19] While also there has, naturally, been criticism of these laws,[20] it has remained for the Laws of the Indies to invoke a unanimous peon of laudation—"the greatest of Colonial books"; [21] "they lived under the 'Leyes de Indias' (may their makers have found favour with God), a code of laws deserving of the greatest praise for wisdom and humanity." [22] "Those who judge the merits of the *Recopilación de Indias,*

the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, p. 291. The Spanish Colonial Minister Maura in his exposition of the Mortgage Law for the Cortes says it "must be looked upon as one of our most important legal works." Quoted in Walton's Civil Law, p. 501.

[19] Lobingier, I Philippine Law Review, 607. The eminent French Jurisconsult A. Leve pays a high tribute to it. Walton's Civil Law, p. 107 n. "The Spanish civil code, although based on the 'Siete Partidas,' was subjected to such radical changes under the influence of the Napoleonic code that little of its original character remained. After passing through a series of additional revisions during the latter half of the nineteenth century, it finally reached a degree of perfection, so far as precision of formulation is concerned, which made it decidedly superior in this respect to any of the Latin-European codes." Rowe, The United States and Porto Rico, pp. 162, 163.

[20] *E. g.* "Considering the age in which it (*La Novísima Recopilación*) was compiled, it is much inferior to the 'Fuero Juzgo' which preceded it by eleven centuries and the *'Partidas'* of six centuries before." Walton's Civil Law in Spain and Spanish-America, p. 79. "The great book of Spanish Law, called 'The *Partidas,*' has a similar history to the Pandects. The *Partidas* purport to be an original compilation of the laws of Spain, but are in fact mainly a condensation of the Pandects, made after the finding of the copy at Amalphi. The *Partidas* were heralded as the most wonderful production of the Spanish jurists. How small their work and how baseless the pretensions of the authors will be shown by a comparison of the two works. . . . The *Partidas* bear the appearance of a compilation of a rude people, made from the laws of a former highly civilized race." Ware, Roman Water Law, pp. 17, 18, 141.

[21] Barrows, History of the Philippines, 2nd Ed., 1907, p. 110.

[22] Sawyer, The Inhabitants of the Philippines, p. 51.

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solely from the results of the civilization which it was intended to direct, will do but poor justice to the most complete and comprehensive scheme of Colonial government which the world has ever known. Although, no doubt, greatly defective in many particulars, and tinctured most prejudicially with the errors in political economy which were peculiar to the times, the *Recopilación* bears all about it evidences of the most farseeing wisdom, the most laborious and comprehensive investigation and management of details, and a spirit of enlightened humanity not easily exceeded." [23]

A study of the Philippine legal system under Spain will show that it was most complete, providing rules of action in almost every conceivable field of activity. These laws, moreover, theoretically guarded the three vital rights of personal liberty, personal security, and personal property.[24] The Philippines were given all the benefits of a substantive law, based on the scientific and widespread civil law of Rome (as influenced by the Germanic, Canonical, and Arabic elements), of which it has well been said that "no wiser or better system of law has ever been devised by the genius of man . . . ; and it is safe to say that it will remain forever, unrivalled and unapproached in the annals of jurisprudence." [25] At the same time, the islands were likewise granted an adjective law, unanimously condemned by impartial critics as "skillfully adapted to the promotion of delay, expense, and denial of justice." [26]

[23] Wallis, Spain, her Institutions, etc.

[24] Abreu, The Blending of Anglo-American Common Law, with the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, p. 294.

[25] Morris, History of the Development of the Law, p. 169.

[26] Preliminary Report of the Second Philippine Commission of November 30, 1900, pp. 81, 82. "Legal proceedings were interminable, and one of the worst things which could befall an individual or

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§ 37. The Governor General[26a] was the personal representative of the Spanish Crown in the Philippines. As such he had close relations with the Minister of the Colonies and was under his immediate control. In addition he was considered the delegate of each of the home ministries of state, of war, and of marine, in matters specially pertaining to those departments. He held office at first for a term of eight years, later for three years, but generally in practice for no stated period. From the time of Legaspi's anchorage near Cebu in 1565 until Diego de los Rios leaves the islands in 1899, there were over one hundred Governors-General of the Philippines.[27] Such conditions led Rizal to write in his famous novel, Noli-Me-Tángere:

"Moreover, if perchance there does come into a high place a person with great and generous ideas, he will begin to hear, while behind his back he is considered a fool,

a corporation in the Spanish days was to become involved in a lawsuit." Gregorio Araneta, in Appendix to Worcester, The Philippines Past and Present, Vol. II, p. 993. In the address of Minister Martinez submitting for the royal approval the revision of 1882 appears the following testimony to a weakness of Spanish procedure in actual operation: "Without ignoring the fact that the Constitution of 1812, the provisional regulations for the administration of justice of 1835, and other subsequent provisions, greatly improved the criminal procedure, it would be unreasonable to deny that even under the legislation in force it is not unusual that the preliminary proceedings last eight or more years, and it frequently happens that they do not last less than two, the temporary imprisonment of the accused continuing in some cases during this entire period." For a vivid description of the Spanish system of remedial law, see the works of Sawyer, Foreman, etc.

[26a] See generally David P. Barrows, The Governor-General of the Philippines under Spain and the United States, XXI Am. Hist. Rev., Jan., 1916, pp. 288-299.

[27] For a list of Governors-General of the Philippines, see Gazetteer of the Philippine Islands, pp. 147, 148 and XVII Blair and Robertson, pp. 285-312.

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'Your Excellency does not know the country, your Excellency is going to ruin them, your Excellency will do well to trust So-and-So,' and his Excellency in fact does not know the country, for he has been until now stationed in America, and besides that, he has all the shortcomings and weaknesses of other men, so he allows himself to be convinced. His Excellency also remembers that to secure the appointment he has had to sweat much and suffer more, that he holds it for only three years, that he is getting old and that it is necessary to think, not of quixotisms, but of the future: a modest mansion in Madrid, a cozy house in the country, and a good income in order to live in luxury at the capital—these are what he must look for in the Philippines. Let us not ask for miracles, let us not ask that he who comes as an outsider to make his fortune and go away afterwards should interest himself in the welfare of the country. . . . And the worst of all this is that they go away just when they are beginning to get an understanding of their duties." [28]

Until 1822 no distinctions were made in appointments to the office; from that date the practice was to appoint a General of the Army as Governor.[29] The position carried a salary of 40,000 pesos with liberal allowances.[30] In case of death, absence on leave, or temporary incapacity, the powers of the Governor-General at first devolved upon the *Audiencia* (Supreme Court), later upon the Archbishop of Manila.[31] Subsequently the order of succession was changed so that the *Segundo Cabo,* the officer second in command of the army or in his absence the com-

[28] English Translation as "The Social Cancer", p. 196.

[29] Montero y Vidal, *Archipiélago Filipino,* 1866, pp. 162-168, XVII Blair and Robertson, p. 335.

[30] See Le Gentil, *Voyage dans Les Mers de L'Inde,* 1781, ii, p. 152.

[31] Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 363, 365.

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mandant of the naval station, became the Acting Governor-General.[32]

All authors agree in emphasizing the almost regal power of the Governor. He possessed all the powers of the King, save where it was otherwise specially provided. His authority was "supreme" and "complete"—"almost absolute"—"practically unlimited."[33] In Coronado's *Legislación Ultramarina*[34] it is said: "This consolidation of such vastly important powers, although it has some inconveniences, has been deemed necessary in order to surround with prestige and sustain a superior authority at so great a distance from the sovereign, in the capitals of those large provinces, sufficiently to provide speedily and easily all requirements for their preservation and tranquillity, for which the captains general are responsible, and to provide also a good policy and administration, the security of the persons and property of the inhabitants, the publication and due execution of the laws and orders emanating from the high government, and, generally, every wise and prudent measure demanded by the public order, the tranquillity, and greater prosperity of the countries intrusted to them." Writing of the "power which is exercised by the Governor who rules the islands in the name of his Majesty," Antonio Alvarez de Abreu, in his *Extracto Historial,* 1736, says:

"So great is this that it may be affirmed with truth that in all his kingdoms and seignories (although the viceroyalties are classed as superior to that government) the king does not appoint to an office of greater authority. If this is not evident, let it be noticed how many crowned

[32] Montero y Vidal, *id.;* San Pedro, *Legislación Ultramarina,* Vol. I, 134.

[33] Insular Government *v.* Jover (1911), 221 U. S. 623, 55 L. Ed. 884, quoting Montero y Vidal, p. 162; Tavera, Census, p. 364, etc.

[34] Vol. 2, pp. 175, 176, etc. See Laws of the Indies, Book 2, title 15, law 11; Book 3, title 3, law 2.

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kings render homage to that governor, and recognize him as superior; how they respect him and fear his arms; how they desire his friendship, and, if they violate it, receive punishment. . . . And it ought to be considered that the governor of *Philipinas* sends ambassadors to all those kings, with gifts to present to them, and receives those that they send to him in return; he makes peace and declares war, and does whatever seems to him expedient; and all this on his own responsibility, without waiting for a decision of the matter from *España,* because the excessive distance renders him the entire master in these acts. This is a pre-eminence of so great authority that no governor or viceroy in Europe exercises it. The grandeur which this monarchy preserves in those islands is widely known." [35]

The functions [36] of the Governor-General included, as Captain-General, the chief command of the military and naval forces of the islands. Moreover, he could appoint and remove all subordinates of the civil administration, except the few who received royal appointments. He had

[35] XXX Blair and Robertson, pp. 31, 32. See to same effect Juan José Delgado, *Historia* (1754), Ch. XVII, pp. 212-215, XVII Blair and Robertson, pp. 314-322. For a Filipino view, see Mabini, *La Revolución Filipina,* pp. 22-24.

[36] "In detail the functions of the Governor-General are as follows:

"1. As the direct delegate of the central power, (1) to publish, execute, and enforce in the provinces under his administration, the laws, decrees, orders, and commands of general character issuing from any of the ministries to which he is subject, and also to secure the fulfillment of all international obligations pertaining to the provinces; (2) to watch over and inspect all the branches of the public service of the state in the islands, and to give an account to the ministries which he represents of any or all matters affecting them; (3) to exercise, in certain specified cases, the prerogative of pardon; (4) to suspend the resolutions, or enforcement of orders of the General Government whenever grave public interests in the islands so demand, giving immediate notice thereof, with reasons therefor, with all possible dispatch; and also to suspend the execution of any act or

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complete control over all executive matters. He had judicial powers and for a long period of time was President of the Supreme Court. His extensive prerogatives extended to all matters pertaining to the integrity of the territory, the conservation of public order, the observance and the execution of the laws, responsibility for the revenues, and the protection of persons and property.

One restriction on the authority of the Governor-General was official encouragement of direct report on the policy and character of the Governor from subordinate officials [36a] Another restriction was for a time the check imposed by the *Audiencia.* The efforts of the latter in

resolution of inferior authorities whenever circumstances may compel.

"2. As chief of administration in the archipelago his functions are (1) to maintain the integrity of the administrative régime in accordance with law; (2) to publish orders and commands for the fulfillment of the laws and regulations, and for the administration and government of the islands, giving an account of his action to the minister of *ultramar;* (3) to propose to the home government whatever in his opinion might promote moral and material interests; (4) to suspend associations or corporations which are found *in delicto;* (5) to authorize the imposition of fines by the governors of provinces upon public officers or corporations; (6) to suspend, for cause, the public servants of the administration appointed by the home government, giving immediate notice thereof, and filling the vacancies meanwhile in a manner corresponding to the law.

"3. In his position of head of the military and naval forces within the archipelago, the Governor-General has the power of the directing-inspector of all military bodies, arms, and equipment. He has the same power and functions as are accorded to the captain-generals of the various districts of the peninsula, with the additional power of the disposition of troops, and the assignment of superior officers to commands, together with the multitudinous and multifarious powers and functions belonging to the general in command of an army corps." Report, First Philippine Commission, Vol. I, p. 74. See also Barrows, The Governor-General of the Philippines under Spain and the United States, XXI Am. Hist. Rev., Jan. 1916, pp. 291-299.

[36a] Barrows, *id.,* pp. 292, 293.

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this direction were generally ineffectual.[37] Another restriction was the ordeal of the *Residencia* at the expiration of office. This was a peculiar Spanish institution designed to hold colonial officials to strict accountability for all acts during their term of office. One or more commissioners, generally the successor in office, appointed for the purpose, opened a court, usually for six months, at which all persons with grievances to complain of against the outgoing official could present their charges.[38] Report was then made to the home government. This method of enforcing responsibility was of varying efficacy. A viceroy of Peru compared the *residencia* "to the whirlwinds which we are wont to see in the squares and streets, that serve only to raise the dust, chaff, and other refuse and set it on our heads."[39] Eventually it fell into disuse. Occasionally the Philippine government was subjected to the inspection of a *visatador*. Appeal could be taken from the decision of the Governor-General to the Council of Administration or to the supreme Spanish government, according to the nature of the case.[40]

§ 38. Central advisory bodies.[41]—The Governor-General was assisted in the administration of the islands by two deliberative bodies, the *Junta de Autoridades* (the

[37] Zúñiga, *Estadismo de las Islas Filipino ó mis Viages por este Pais*, Ed. Retana, i, p. 244.

[38] *Recopilación de Leyes de las Indias*, lib. V, tit. XV, ley VII.

[39] Bourne, Spain in America, pp. 231, 232. See also Foreman, The Philippine Islands, 3rd Ed., 1906, p. 79; Gemelli Careri (Italian traveller in Philippines in 1697) Churchill, Collection of Voyages, IV, 411. Helps, Spanish Conquest in America (new ed.), III, 102-109, traces the history of the institution.

[40] Arellano C. J. in Roura *v.* Insular Government (1907), 8 Phil. 214.

[41] See Report, First Philippine Commission, Vol. I, pp. 75, 76; Testimony of Manuel Sastrón, Spanish author and administrator, before the Commission, Vol. II, pp. 102-104; Testimony of Chief Justice Arellano, *Id.*, pp. 19-22.

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Board of Authorities) and the *Consejo de Administración* (the Council of Administration). The first, created by royal decree of April 16, 1850, served as a cabinet to the Governor-General; the latter, established pursuant to a royal decree of July 4, 1861,[42] as a representative advisory board. Neither had legislative functions, except that the Council of Administration could propose regulations for executive sanction putting the Spanish laws into force. The acceptance of the advice of either body did not relieve the Governor-General of personal responsibility.

The Board of Authorities was composed of the Governor-General, as president; the Archbishop of Manila; the General, second in command; the Admiral of the Navy; the treasurer; the director-general of the civil administration; the President of the *audiencia* (Chief Justice of the Supreme Court); and the Attorney-General. Its functions were purely consultative, advising the Governor-General on questions of unusual importance, especially in cases where it was needful for him to have the co-operation of heads of departments.

The Council of Administration was likewise a consultative body, but of rather large representation. It was composed of some twelve members *ex-officio*—the Governor-General as president; the Archbishop of Manila; the General, second in command; the Admiral of the Navy; the Chief Justice of the Supreme Court; the treasurer; the director-general of the civil administration; the reverend fathers superior of the religious orders; the president of the Chamber of Commerce of Manila; and the president of the Society of Friends of the Country (*amigos del pais*). In addition there were six delegated members, three from the provinces of Luzon

[42] See further royal decrees of March 19, 1875, and Sept. 13, 1888, in connection with decree of Nov. 23 same year.

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and three from the Visayan provinces, and four members of royal naming. Two only of the Council received salaries; their duties were to prepare papers in proper form for consideration. The powers and duties of this council of administration were to consider the general budgets; the local budgets; changes in the regulations or instructions which the Governor-General could propose to the home government; questions of royal patronage, and all other matters which the Governor-General might see fit to submit for opinion.

§ 39. Central administrative agencies.[43]—The Governor-General exercised his civil functions by means of administrative officials. The most important of these were the director-general of the civil administration, the *intendente general de hacienda* (the treasurer), and a secretary. They had control of the various bureaus of the government. The office of the director-general of the civil administration was charged with the management of municipal and provincial governments, public instruction, public works, mines and forests, public health, charity, agriculture, and communications. The treasurer had control of customs, lotteries, the treasury, and supervision of the auditor. One of the Governor-General's secretaries acted relative to matters pertaining to patronage, public order, the judiciary, and international affairs. There were, of course, numerous other boards and offices.

§ 40. Provincial administration.[44]—The islands were divided for administrative purposes into provinces and districts, attempted to be formed according to the

[43] See Report, First Philippine Commission, Vol. I, pp. 76-78; Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 363-365; Mabini, *La Revolución Filipina,* pp. 22-24.

[44] See generally Report, First Philippine Commission, Vol. I, pp. 63-72; Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 213-216; Jagor, Travels in the Philippines, Eng. Ed., pp. 54, 55, 122; Sawyer, The Inhabitants of the Philippines, pp. 8, 9, 10, 53; Montero y Vidal,

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dialects spoken by the inhabitants.[45] Few and of large extent, in the beginning, subdivisions were made until there were a large, and an excessive number of provinces and districts.[46] The fundamental division was into civil and military. The former came to cover the major portion of Luzon. The rest of the islands, including the Visayas, Mindanao, and the Sulu Archipelago, was under military rule. It was intended in due time to appoint civil governors to every district as each became fit for it. Civil government was divided into four classes according to importance, wealth, and size—Manila, which ranked all others, and first, second, and third class (*de término, de ascenso, de entrada*).[47]

Leaving aside the powers of the military officers and the politico-military governors, the beginning of civil government came through the appointment of *Alcaldes Mayores* (Judicial Governors) as successors to the *Encomenderos*. The *Alcaldes Mayores* combined both executive and judicial functions.[48] They received small salaries of from 300 pesos a year and upwards, but with the privilege of trading (*indulto de comercio*), making

Archipiélago Filipino, 1866, pp. 162-168, XVII Blair and Robertson, pp. 328-334.

[45] For an historical summary of the variations in the names of the provinces, see Retana's Zúñiga's *Estadismo*, ii, p. 376 ff.

[46] According to Foreman, The Philippine Islands, 3rd Ed., 1906, p. 213, "The Archipelago, including Sulu, was divided into 19 Civil Provincial Governments, 4 Military General Divisions, 43 Military Provincial Districts, and 4 Provincial Governments under Naval Officers, forming a total of 70 Divisions and Sub-Divisions." Sawyer, The Inhabitants of the Philippines, pp. 8, 9, gives the number as fifty-one provinces or districts.

[47] Royal decrees of December 11, 1830, and September 28, 1844, Vol. VI Alcubilla, *Diccionario de la Administración*, p. 520.

[48] "This created a strange anomaly, for an appeal against an edict of the Governor had to be made to himself as Judge. Then if it were taken to the central authority in Manila, it was sent back for 'information' to the Judge-Governor, without independent inquiry being

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the office very remunerative to the holders.[49] The first reform came in 1844 when the *Alcaldes* were prohibited from trading. Finally in June, 1886, executive and judicial functions were separated, eighteen civil governors were appointed to the principal provinces, and the

made in the first instance; hence protest against his acts was fruitless." Foreman, The Philippine Islands, 3rd Ed., 1906, p. 213. "The islands are divided by provinces, in each of which there is a subordinate chief who is styled governor or *alcalde-mayor.* These exercise jurisdiction in the first instance, in matters of government and litigation. They are military captains, and have in charge the collection of the royal revenues, under a responsibility guaranteed by bonds to the satisfaction of the accountant-general of the army and royal treasury. The province of Cavite is an exception to this rule, for the collection of the tribute there is now made by an assistant of the chief justice. Therefore he who rules in a province exercises all the attributes of political chief, and as such is subject to the Governor-General; those of judge of first instance, and as such is dependent on the Audiencia; those of sub-delegate of treasury (although he does not have the disposal of the monopolized incomes), and as such has to render accounts, bonds, and obedience to the chiefs of the treasury; and finally, if he is of military rank, he is commandant-of-arms, and subaltern of the captain-general; and even though he be not of military rank he obtains the rank of military commander *(capitan a guerra)* by virtue of his rank of *alcalde mayor.* He has charge of the company assigned to his province, and, in the absence of his Majesty's troops, he commands the troops that he equips upon extraordinary occasions." Sinibaldo de Mas, *Informe sobre el estado de las Islas Filipinas en 1842,* XVII Blair and Robertson, pp. 323, 324.

[49] "The *alcaldes* were at the same time governors, magistrates, commanders of the troops, and, in reality, the only traders in their province. They purchased with the resources of the *obras pias* the articles required in the province; and they were entirely dependent for their capital upon these endowments, as they almost always arrived in the Philippines without any means of their own. The natives were forced to sell their produce to the *alcaldes* and, besides, to purchase their goods at the prices fixed by the latter." Jagor, Travels in the Philippines, Eng. Ed., p. 122. "In 1840 some of the offices of *alcalde* were worth 50,000 pesos per year." Tavera, Census of the Philippine Islands, 1903, Vol. I, p. 366; Tomás de Comyn, State of the Philippine Islands, translation by Walton, p. 197.

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functions of the *Alcaldes* were confined to their judgeships.

The civil governors so authorized were the direct representatives of the Governor-General. They were named and removed by virtue of royal decrees issuing from the Minister of the Colonies. They were in all cases Spaniards. To be appointed a civil governor one of numerous fixed qualifications was required. Civil governors of the first class received a salary of 4,500 pesos, of the second, 4,000 pesos, and of the third, 3,500 pesos; liberal allowances of various kinds were also made.[50] The civil governor was the chief authority in his province with wide powers[51] in all administrative and economic matters. He was in a word, the provincial government.

[50] Testimony of Manuel Sastrón, Spanish author and administrator, before the First Philippine Commission, Vol. II, p. 105.

[51] "The powers and functions of the civil governor are in the main as follows:

"1. As representative of the Governor-General, his functions are to publish, execute, and cause to be executed the laws, decrees, and orders of the Governor-General within his province; to maintain public order and protect persons and property; to suppress and punish acts within his province which are contrary to the religion of the state or to public morals; to punish breaches of respect for public authority, not amounting to crime or misdemeanors; to grant licenses to carry arms; to hold at his disposition, and to dispose, as may be necessary, of the force of the civil guard and other civil constabulary of the province, or, when necessary, to call for the aid of military forces for the protection and maintenance of public order; to impose, by way of penalty, a suspension of ten days' salary of employees subject to his orders; to suspend the services and salary of such employees as may be unfit, by reason of lack of qualification or zeal, or morality, for the discharge of their duty; to publish within his province proclamations relative to good government and public health; to suspend, with the assent of the other provincial authorities, and for reasons of public safety, decrees or orders of the Governor-General, immediately informing the Governor-General, however, of such action, with the reasons therefor; to preside at the meetings of the provincial councils and at the elections of mayors of local towns of

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Under the Maura Law of 1893 a provincial council to be established in the capital of the province was author-

the provinces; to suspend according to law such mayors, or any other individuals composing the tribunals or town councils; to propose to the Governor-General the dissolution of such town councils when deemed necessary; to submit to the action of the representatives of the judicial power delinquent municipal servants; to see that the ordinances with respect to forbidden games are enforced; to give or deny permission for the giving of public performances; to look after the fulfillment of the regulations of the corporations or establishments whose safeguarding is intrusted to him; to exercise the duties of captain of the port or delegate of the navy in places where no regular officer for that purpose exists.

"2. As chiefs of administration within the province the functions of the civil governor are to care for public instruction, and especially for that of the lower grades, and for the extension of knowledge of the Spanish tongue; to propose to the Governor-General means conducing to the increase of public health and welfare; to propose to the Governor-General concessions of royal lands according to law; to give licenses for cutting of timber according to existing regulations; to care for the collection of taxes of the provinces; to issue executions against defaulting or delinquent debtors to the public funds, and to discharge such functions in the levying and collection of municipal taxes as have already been described in the section on municipal government; to make up the provincial budgets and remit them to the Governor-General for his approbation; to order the payment of sums authorized in the budget; to formulate provincial and municipal accounts, and to certify monthly to the balance of funds in hand; to care for public works and to determine those which are to be done by personal service.

"3. As chief administrative officer within the province it is the duty of the governor to supervise all municipal councils as has heretofore been described.

"In addition, the provincial governors possess such other powers as are given them by law in the matters of postal service, telegraphic service, prisons, jails, charities, public health, public works, forests, mines, agriculture, and general industry, and such other functions with respect to the matters mentioned as the Governor-General may delegate to them." Report of the First Philippine Commission, Vol. I, pp. 65-67. See also Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 215, 216.

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ized. There were nine members, five *ex-officio,* and four residents of the capital elected by the captains of the municipal councils for terms of six years, with the civil governor as presiding officer, and a secretary. The functions of the council were mainly those of inspection and consultation.

§ 41. Municipal administration.—The unit of local administration was the "pueblo" which ordinarily embraced an area of many square miles and contained numerous "barrios" or villages. For its government, the Spaniards in the beginning continued the native *barangays,* confirming the chiefs in authority under the title of *cabeza de barangay.* As the next step [52] the towns were organized with a native official called the *gobernadorcillo* (literally "little governor"), with the popular title of *capitán,* at the head. He was the representative of the provincial governor, was the arbiter of local questions except those assuming a serious legal aspect, was responsible for the collection of the taxes, was bound to assist the parish priest, and entertained all visiting officials. Assisting the *Gobernadorcillo* were *tenientes* (deputies), *alguaciles* (subordinate employees), and chiefs of police, fields, and cattle.[53] Elections [54] for municipal offices were held annually by the outgoing *gobernadorcillo* and twelve *cabezas de barangay,* chosen by lot, presided over by the

[52] See Remarks on the Philippine Islands, 1819 to 1822, by an Englishman, LI Blair and Robertson, pp. 106-108, 121; Sinibaldo de Mas, *Informe sobre el estado de las Islas Filipinas, en 1842,* Book II, XVII Blair and Robertson, pp. 324-327; Montero y Vidal, *Archipiélago Filipino,* 1866, pp. 162-168, XVII Blair and Robertson, pp. 328, 334. Also royal decree of Nov. 12, 1889.

[53] Jagor, Travels in the Philippines, Eng. Ed., p. 237. See further as to "alguaciles", Araullo J. in U. S. *v.* Dungca (1914), 27 Phil. 274.

[54] See Sinibaldo de Mas, *id.* The following interesting account of an election is given by Jagor, Travels in the Philippines, Eng. Ed., pp. 235, 236, 237: "As the annual elections are conducted in the same manner over the whole country, that at which I was present may be

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provincial governor, the parish priest being permitted to be present. For the office of *gobernadorcillo* the names of three candidates were nominated by plurality vote and sent to the Governor-General, or in outlying provinces to the governor, who selected one for the position. Other municipal officers were chosen directly by the convention.

The municipality was divided into *barangays* (barrios or wards) of about fifty families. For their administration there were *cabezas de barangay* shorn of much of their previous powers, whose principal duties were to act as agents for the collection of the taxes for the payment of which they were held responsible. They paid no tribute on their own account and became members of the *principalia* (principal men)—the voting and privileged class. Originally hereditary, breaks in the family line were filled by appointments by the Spanish officials; eventually the position became generally elective with service compulsory.

taken as typical of the rest. It took place in the common hall; the governor (or his deputy) sitting at the table, with the pastor on his right hand, and the clerk on his left,—the latter also acting as interpreter; while *Cabezas de Barangay,* the *gobernadorcillo,* and those who had previously filled the office, took their places all together on benches. First of all, six *cabezas* and as many *gobernadorcillos* are chosen by lot as electors; the actual *gobernadorcillo* is the thirteenth, and the rest quit the hall.

"After the reading of the statutes by the president, who exhorts the electors to the conscientious performance of their duty, the latter advance singly to the table, and write three names on a piece of paper. Unless a valid protest be made either by the pastor or by the electors, the one who has the most votes is forthwith named *gobernadorcillo* for the coming year, subject to the approval of the superior jurisdiction at Manila; which, however, always consents, for the influence of the *cura* would provide against a disagreeable election. The election of the other functionaries takes place in the same manner, after the new *gobernadorcillo* has been first summoned into the hall, in order that, if he have any important objections to the officers then about to be elected, he may be able to make them. The whole affair was conducted very quietly and with dignity."

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The foregoing was the system which prevailed up to the year 1893. In that year there was promulgated the Maura Law [55] taking its name from its author, the then Minister of the Colonies. It applied to the towns of Luzon and the Visayan Islands in which more than one thousand cédulas were paid. A municipal council of five, the captain and four lieutenants, was constituted. It was given charge of the active work of governing the municipality, such as administration of public works, etc., and the details of taxation. In addition each of its members was required to have special qualifications and performed certain specified duties. These positions were honorary. The term of office was four years. The officers, together with two substitutes, were elected by twelve delegates of the *principalia*. The latter was composed of all persons who had held certain offices or who paid a land tax of 50 pesos. The Governor-General and the provincial governor retained disciplinary jurisdiction over the council and its individual members; the provincial council also had supervision of the municipal council. The Maura Law had not really been made effective before American occupation.

As an exception to the general plan was the organization of the city of Manila, and up to the time of the Maura Law, of the other principal cities, such as Iloilo and Cebú, whose government followed quite closely that which prevailed in Spanish-America, which in turn was derived from Spain. Founded in 1571 by Legaspi as a Spanish city, Manila was speedily given recognition and entitled like so many Spanish cities of the peninsula

[55] By Royal Decree of May 19, 1893. See Pedro A. Paterno, *El Régimen Municipal en las Islas Filipinas;* Report of the First Philippine Commission, Vol. I, pp. 43-63; De Veyra, Despujols and the Municipal Reform, in *Efemérides Filipinas,* pp. 147-152; Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 367, 368, 369; Sawyer, The Inhabitants of the Philippines, pp. 10, 11.

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"Very loyal and noble city." [56] These corporations had the usual Spanish officials, including two *Alcaldes* (Mayor and Vice Mayor) and *regidores* (councilors); who virtually became self-perpetuating bodies.[57]

§ 42. The judiciary.[58]—During the last years of Spanish sovereignty, the administration of justice was intrusted to the *Audiencia Territorial de Manila* (Territorial Supreme Court of Manila); two superior courts for criminal cases, the *Audiencia de lo Criminal de Cebú* and the *Audiencia de lo Criminal de Vigan;* courts of first instance in the provinces; and justice of the peace courts in the municipalities. In addition there were courts of special jurisdiction and a department of public prosecution. Two of these special courts, the treasury and commercial courts, were finally abolished; another, the contentious court, was made a division of the council

[56] Lecture by James A. Robertson, Early Social and Economic History of Manila, before the Philippine Academy, January 7, 1914.

[57] Zúñiga, *Estadismo de las Islas Filipinas,* Vol. I, p. 245; Captain Blunt, An Army Officer's Philippine Studies, p. 36; Vilas *v.* Manila (1911), 220 U. S. 345, 55 L. Ed. 491.

[58] See Historical Résumé of the Administration of Justice in the Philippine Islands, by Cayetano S. Arellano, Chief Justice of the Supreme Court, Exhibit J, Report of the Second Philippine Commission, Nov. 30, 1900, pp. 225-234; Sketch compiled partly from articles written by Chief Justice Arellano and Associate Justice Torres, of the Supreme Court, and from royal decrees, orders, and cédulas, and various historical works, Census of the Philippine Islands, 1903, Vol. I, pp. 389-410; Gregorio Araneta, former Attorney-General and Secretary of Finance and Justice, in a summary statement "The Past and Present Organization of the Courts of the Philippine Islands" appearing as a part of the Appendix to Worcester, The Philippines Past and Present, Vol. II, pp. 988-999; Bowring, A Visit to the Philippine Islands, 1859, Ch. IX; Judge Harvey, The Administration of Justice in the Philippine Islands, IX Illinois Law Review, June, 1914, pp. 77-79, 1 Philippine Law Journal, Feb., 1915, pp. 334-336; David Cecil Johnson, Courts in the Philippines—Old, New, XIV Michigan Law Review, February, 1916, p. 300; Organic Laws of Tribunals, extended to the Philippines, January 5, 1891.

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of administration; while the military, naval, and ecclesiastical courts were restricted—the military and naval to cognizance of military offenses, and the ecclesiastical courts to canonical matters and ecclesiastical offenses. Appeals in some cases could be taken to the Supreme Court of Spain, civil cases being submitted to Chamber No. 1 of the court and criminal cases to Chamber No. 2.

Judges of the superior courts were appointed by the Minister of the Colonies in Madrid. Late Royal Decrees established the independence of the judges and governed transfers, suspensions, and removals. Judicial salaries were meager—from 2,000 pesos to 7,000 pesos per annum.

The *Audiencia* was established in 1584; up to that date the Governor had exercised judicial functions.[59] The decree stated that the court was founded "in the interests of good government and the administration of justice, with the same authority and pre-eminence as each of the royal *audiencias* in the town of Valladolid and the city of Granada." The first president of the court was Governor Santiago de Vera. The oldest document now remaining in the office of the clerk of the Supreme Court is a judgment in a criminal case imposing the death penalty, entered in 1601. Abolished in 1589, the *Audiencia* was reestablished in 1596 and continued with varying offices and functions throughout the Spanish régime. For many years it was not only a court of justice, but a superior council, with a variety of important legislative and executive powers as well.[60] The Governor-General was presi-

[59] Under Royal Order of August 14, 1569.

[60] Morga, p. 345; *Recopilación de Leyes de las Indias,* lib. ii, tit. xv, leyes xi, lviii; Census of the Philippine Islands, 1903, Vol. I, pp. 390 *et seq.* Royal decree of July 4, 1861, VII San Pedro, *Legislación Ultrumarina,* 38 divested the *Audiencia* of its administrative and legislative powers.

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dent of the *Audiencia* until 1861. As finally organized,[61] it was composed of one chief justice, two presidents of chambers (civil and criminal branches), eight associate justices, additional justices for vacancies (*magistrados suplentes*), an attorney-general, and other officials. It then had some original jurisdiction, and appellate jurisdiction over the entire archipelago in civil matters and over the province of Manila and fifteen enumerated provinces adjacent thereto in criminal matters.

The superior criminal courts of Cebú and Vigan were created in 1893. The *Audiencia Territorial* of Cebú existing since 1886 was thereupon abolished. The personnel of each of the criminal courts consisted of a chief justice, two associate justices, an attorney-general, an assistant attorney-general, and a secretary. They had appellate jurisdiction of criminal cases coming from the surrounding territory.

Following the separation of the executive and judicial powers of the *Alcaldes Mayores,* a number of provinces and districts were given at least one court of first instance. These were divided into three classes, designated *de entrada, de ascenso,* and *de término.* The courts of first instance had both civil and criminal jurisdiction, including appellate jurisdiction from justice of the peace courts, specified in great detail in the laws. For every such court there was a *fiscal* and a clerk of court. A register of property with a recorder was also established in each province.

Justice of the peace courts, succeeding the *gobernadorcillo* who had previously exercised judicial functions, were authorized in 1885 for every *pueblo.* Appointments were made by the Governor-General on the recommendation of the Chief Justice. Justices of the peace re-

[61] See various royal cédulas and royal orders for previous organizations.

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ceived no salaries; their only compensation was the fees which the law allowed them to charge. They had jurisdiction, in their respective *pueblos,* in civil actions, when the amount claimed did not exceed two hundred pesos, and in criminal cases, over misdemeanors.

One branch of the Spanish judicial system as applied to the Philippines, the Department of Public Prosecution, remains to be noticed. The head of the department in the Philippines was the Attorney-General of the *Audiencia* of Manila, with assistants in the *Audiencia* and lower courts appointed by the Attorney-General. It was the duty of the Department of Public Prosecution to see to the execution of all the laws and decrees, referring to the administration of justice, to supervise the duties of the subordinate *fiscals,* to represent and defend minors or other incapacitated persons or absentees whose rights were in question, to preserve intact the powers and competency of the ordinary courts, to represent the government and its departments in the enforcement of the laws and in all civil and criminal actions to which the state was a party.

§ 43. Ecclesiastical administration.[62]—Since the principle of the separation of church and state was unknown to Spain, it was inevitable that the same idea should persist in a great mission like the Philippines. The extent of church control of the civil administration is debatable.[63] At least some facts are certain: The church received financial support from the state. On different

[62] See generally Captain Blunt, An Army Officer's Philippine Studies, seventh paper, p. 291; Report, First Philippine Commission, Vol. I, Part VII; Bowring, A Visit to the Philippine Islands, Ch. XII; Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 369, 370; Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 202-208; and numerous articles in Blair and Robertson, The Philippine Islands.

[63] "The peculiar intertwining of the civil and religious in Spanish public life, allowed ecclesiastical intervention in almost every act of

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occasions the supreme civil authority was vested in the prelates. The archbishop and bishops had membership in administrative boards. The friars were exempted from trial for offenses, except the most heinous, in the ordinary civil courts. Moreover to the everlasting honor of the great religious orders be it said further that their work was not limited to religious instruction. The missionaries, Archbishop Harty says, were men "who not only had a knowledge of physics, philosophy, and theology, but were also architects and builders, advance agents of civilization." [63a] The spread of European customs, installation of printing presses, the teaching of writing, instruction in the arts and trades, medical treatment, training in music, introduction of improved agricultural methods,—these are some of the benefits of clerical activity to which "the Philippine Islands owe, more than to anything else, their internal prosperity, the Malay population its sufficiency and happiness." [64] Another author, writing sympathetically of the religious orders, says of them—

government." James A. Robertson in A Short History of the Philippines. "In Spain it was impossible to find the slightest indication of any separation between church and state; in the Philippine Islands this union was apparently even more intimate." T. H. Pardo de Tavera, Census of the Philippine Islands, 1903, Vol. I, p. 361. "The absurdity of the assumption that the friars dominated or controlled the Spanish government and the courts is also made manifest. Of all the governors and other high officials at the head of affairs during the evolution of the crisis in the Philippines, there was not one but would properly have resented the imputation that he was not acting on his own authority and responsibility." John R. Volz in the Editor's foreword to Captain Blunt, An Army Officer's Philippine Studies, p. ix.

[63a] Archbishop Harty, The Religious Situation in the Philippines, 62 Ind., May 30, 1907, p. 1246.

[64] W. Gifford Palgrave, Ulysses or Scenes and Studies in Many Lands, Essay on Malay Life in the Philippines (1876), p. 150. See also McKinley, Island Possessions of the United States, p. 209.

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"In the evangelization of the Philippines, by persuasion and teaching, they did more for Christianity and civilization than any other missionaries of modern times. Of undaunted courage, they had ever been to the front when calamities threatened their flocks. In the pursuit of their calling they have witnessed and recorded some of the most dreadful convulsions of nature, volcanic eruptions, earthquakes, and destructive typhoons. In epidemics of plague and cholera they have not been dismayed, nor have they ever in such cases abandoned their flocks. Whenever an enemy attacked the Islands they were the first to face the shot. Only fervent faith could have enabled these men to bear the soul-trying solitude and absence of real companionship, to endure the hardships, and to overcome the dangers that encompassed them. They performed wonders in advancing the agricultural and industrial development of the country. They encouraged every good trait in the natives, and when the latter responded to the unselfish efforts lavished upon them, they always found themselves in most friendly, harmonious, and helpful relations with their preceptors. The friars did much, in fact did all that could be done for education, having founded schools for both sexes, training colleges for teachers, the University of Santo Tomás in Manila, and other institutions. Hospitals and asylums attest their charity. They were formerly, and even lately, the protectors of the poor against the rich, and of the native against the Spaniard. They consistently resisted the enslavement of the natives. They restrained the constant inclination of the natives to wander away into the woods and to revert to primitive savagery, by keeping them in the towns, or, as they said, 'under the bells.' " [65]

The diocese of Manila was founded in 1578. Three years later came the first bishop, suffragan to the arch-

[65] Captain Blunt, *id.*, pp. 323, 324.

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bishopric of Mexico. Manila was erected into a metropolitan see in 1595 by His Holiness, Clemente VIII.

The head of the ecclesiastical system was the archbishop of Manila, assisted by four bishops. Subordinate to them were the curates or parish priests appointed to each town. These later, in addition to their religious duties, had extensive civil functions in the administration of municipal government.[66]

[66] "Of even higher authority in every village than the 'Captain' himself is the 'Cura' or parish priest. . . . He commonly becomes, and that in the truest and best sense of the term, a very father to his people, and finds in their reverence and affection motive enough to encourage him in continuing to deserve the title." Palgrave, Ulysses or Scenes and Studies in Many Lands, pp. 149, 150. During the investigation of the religious orders made by the Philippine Commission in 1900, Father Juan Villegas, the provincial or head of the Franciscan friars, testified as follows as to the civil duties and powers exercised by the members of his order in the municipalities:

"The following may be mentioned as among the principal duties or powers exercised by the parish priest: He was the inspector of primary schools; president of the health board and board of charities; president of the board of urban taxation (this was established lately); inspector of taxation. Previously he was the actual president, but lately honorary president, of the board of public works. He certified to the correctness of cédulas—seeing that they conformed to the entries in the parish books. They did not have civil registration here, and so they had to depend upon the books of the parish priest. These books were sent in for the purpose of this cédula taxation, but were not received by the authorities unless viséed by the priest. He was president of the board of statistics, because he was the only person who had any education. . . . Under the Spanish law every man had to be furnished with a certificate of character. If a man was imprisoned and he was from another town, they would send to that town for his antecedents, and the court would examine whether they were good or bad. They would not be received, however, unless the parish priest had his visé on them. The priests also certified as to the civil status of persons. Every year they drew lots for those who were to serve in the army, and every fifth man drawn being taken. The parish priest would certify as to that man's condition. . . . By law he had to be present when there were elections for

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The judicial functions of the church were represented by the archbishop's court and the commissioner of the inquisition. This court was made up of the archbishop, the vicar-general, a notary, and other officials. The suffragan bishops had similar courts. These ecclesiastical courts tried cases coming under the canon law, such as those relating to matrimony, and ecclesiastical offenses excepting those of an atrocious nature.[67] As to the in-

municipal offices. . . . He was censor of the municipal budgets before they were sent to the provincial governor. . . . He was also counselor for the municipal council when that body met. . . . The priests were supervisors of the election of the police force. . . . He was examiner of the scholars attending the first and second grades in the public schools. He was censor of the plays, comedies, and dramas in the language of the country, deciding whether they were against the public peace or the public morals. These plays were presented at the various *fiestas* of the people. He was president of the prison board and inspector (in turn) of the food provided for the prisoners. He was a member of the provincial board. Besides the parish priest there were two curates who served on this board. Before the provincial board came all matters relating to public works and other cognate matter. All estimates for public buildings in the municipalities were submitted to this board. He was also a member of the board for partitioning Crown lands. After the land was surveyed and divided, and a person wanted to sell his land, he would present his certificate, and the board would pass upon the question whether or not he was the owner. This would be viséed by the board for the purposes of taxation. When a private individual wanted to buy Government land he would apply to the proper officer, pay his money, and the board would determine whether the transfer was according to law. In some cases the parish priests in the capitals of the provinces would act as auditors. In others, where there was an administrator only, the curate would act as auditor. Besides the above there were other details which devolved upon the priest." Report of the Second Philippine Commission, Nov. 30, 1900, p. 25; Report of the First Philippine Commission, 1900, Vol. I, p. 57.

[67] "The canon law, which the ecclesiastical courts administered both in Spain and here, had not as such any binding force outside of the church. However, any part of the canon law which by proper action of the civil authorities had become a civil law stood upon the same

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quisition in the Philippines,[68] it was under the jurisdiction of Mexico and was strictly limited and defined.

§ 44. Public finances.[69]—The budgets required the approval of the Minister of the Colonies. For the financial administration of the islands there were managers of the revenues, directly responsible to the central government, provincial officials of different classes, and municipal agents.

In 1584 the receipts and expenditures for the colony were 33,000 pesos and 42,000 pesos, respectively. For the fiscal year 1896-1897 each was estimated at approxi-

footing as any other law of Spain. This happened in the case of the decree of the council of Trent." De la Rama *v.* De la Rama (1903), 3 Phil. 34, 39. The Decretal Law of December 6, 1868, abolishing in the Peninsula the special jurisdictions, was extended to the Philippines by a royal order of February 19, 1869, which was published in the *Gaceta de Manila* on June 2, 1869. That Decretal Law contained the following provision:

"The ecclesiastical courts shall continue to take cognizance of matrimonial and eleemosynary causes and of ecclesiastical offenses in accordance with the provisions of the canon laws. They shall also have jurisdiction over causes of divorce and annulment of marriage as provided by the holy council of Trent; but incidents with respect to the deposit of a married woman, alimony, suit money, and other temporal affairs shall pertain to the ordinary courts." Quoted in De la Rama *v.* De la Rama, *Id.*, p. 40. See further as to canon law, Walton's Civil Law in Spain and Spanish-America, pp. 43-50; and as to ecclesiastical courts, Census of the Philippine Islands, 1903, Vol. I, pp. 404-406, and Chief Justice Arellano, Exhibit G, Report, Second Philippine Commission, Nov. 30, 1900, pp. 227-229.

[68] See Lea, The Inquisition in the Spanish Dependencies, pp. 299-317; J. T. Medina, *El Tribunal del Santo Oficio de la Inquisición en las Islas;* Retana, *La Inquisición en Filipinas.*

[69] See generally Foreman, The Philippine Islands, 3rd Ed., 1906, Ch. XIV; Bowring, A Visit to the Philippine Islands, Ch. XXII; Kamantigue, A Critical Study of the System of Taxation in the Philippines, Ch. II, unpublished; Report, First Philippine Commission, Vol. I, pp. 49-56, 69-72, 76-81; Report, Second Philippine Commission, Nov. 30, 1900, pp. 94-104.

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mately 17,000,000 pesos.[70] It was always difficult and sometimes impossible to pay the expenses of the govern-

[70] Taking figures for normal times, the estimated receipts and expenditures for the year 1894-95 were as follows:

"1. General obligations	₱1,360,506.53
2. State	65,150.00
3. Church and courts	1,687,108.88
4. War	4,045,061.84
5. Treasury	823,261.95
6. Navy	2,450,176.77
7. Government (*gobernación*)	2,220,120.98
8. Public works and institutions (*fomento*)	628,752.46
Total	₱13,280,139.41

"Under the first head—general obligations—it appears that of the ₱1,360,506.53 specified the sum of ₱118,103 was spent on the colonial department and connected branches in Madrid; ₱70,822.73 on the colony of Fernando Po, on the coast of Africa; ₱718,000 on pensions and retiring allowances, and ₱367,000 on interest on deposits. Of the ₱65,150 devoted to the state nearly the whole amount was used toward defraying the cost of Spain's diplomatic and consular service in the Orient, namely, in China, Japan, and the neighboring French and British colonies. Under the third head ₱1,687,108.88 is charged to church and courts; of this amount ₱460,315.24 was spent on the courts, and the balance on the church, the two largest items being ₱625,860 for the parochial clergy (whose salaries were ₱500, or ₱600, or ₱800, or in a few cases ₱1,200, while the four bishops had each ₱6,000, and the archbishop ₱12,000) and ₱419,680 for materials for the ecclesiastical establishments (₱360, or ₱500, or ₱600, or in a few cases ₱800 being allowed to each parish). War, it will be seen, ate up nearly one-third of the revenues, and of the enormous sum (₱4,045,061.84) provided for that department the salaries of the officials of the administrative bureau consumed ₱771,043.25, while ₱1,334,484.32 was spent on materials for the army and ₱1,997,649.27 on that body itself. Under the fifth head is the treasury, with ₱823,261.95 of which ₱232,796 was for the maintenance of the central offices of the intendency-general, the central treasury, and the comptrollership, and ₱216,244 for the provincial administrations of the public treasury. The navy comes sixth in the list, with ₱2,450,-176.77, of which ₱1,147,540.42 was for materials, and ₱1,349,504 for services. The seventh head is government, with an expenditure of

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ment from the Philippine treasury. The deficits were met if at all by the royal treasury of Mexico. This subsidy

₱2,220,120.98, of which ₱272,606 was for the salaries of the Governor-General and the provincial governors and commanders, ₱843,735.91 for the civil guard (composed of 3,482 individuals), ₱969,921.92 for the maintenance of postal and other communications, and ₱88,555 for the general directorate of the civil administration. The last head is public works and institutions, costing ₱628,752.46, of which ₱141,175.50 was for special institutions of instruction, chiefly in Manila; ₱109,690 for public works (mostly in salaries), ₱142,365 for the general inspection of mountains, ₱15,575 for mines, ₱103,570 for the agricultural school and stations, and ₱37,462 on maritime navigation and light-houses.

"The receipts of the general government in the Philippines were in 1894-95 as follows:

1. Direct taxes	₱6,659,450
2. Indirect taxes (customs)	4,565,000
3. Receipts from monopolies	1,112,850
4. Lotteries	873,000
5. From state property	195,500
6. Estimated petty receipts	174,100
Total	₱13,579,900

"Of the proceeds of direct taxation, which made up one-half (₱6,659,450) of the total revenue of the general government, the sum of ₱4,586,250 was collected from *cédulas,* or identification certificates, of which every Filipino was required to secure one annually, the cost ranging from ₱1 for the tenth class to ₱5 for the fifth class, ₱15 for the third, and ₱25 for the first class, next to the *cédulas* the most productive direct tax was that on commerce and industry, which netted ₱1,323,000. Then followed the poll tax on the Chinese with ₱482,800, after which came the tax on urban property with ₱110,400. The balance was made up by ₱12,000 in tribute from unconquered tribes, ₱35,000 from a 10 per cent tax on railway tickets, ₱70,000 from a 10 per cent assessment on certain salaries, and ₱40,000 from a 25 per cent assessment on the premiums for the collection of urban and industrial taxes, *cédulas,* and the Chinese poll tax.

"The indirect taxes or customs receipts, which aggregated ₱4,565,000, were composed of ₱3,800,000 from duties on imports, ₱430,000 from duties on exports, ₱300,000 from clearance dues, and the remainder ₱35,000 for fines, etc.

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known as *el situado* [71] amounted to about a quarter of a million pesos annually.

Certain sources of income decreased or were abolished

"Under the third head, of receipts from monopolies, stand ₱602,300 received from the opium contract and ₱510,550 from stamps and stamped paper, making together ₱1,112,850.

"The government lotteries produced ₱873,000, all but ₱4,000 from the sale of tickets.

"The receipts from state property (₱195,000) include rents or products as well as sales. The largest single item was ₱122,000 from forest products; the next, ₱45,000 from the sale of lands, and ₱25,000 from the sale of buildings.

"The sixth and last source of revenue is uncertain. Of the ₱174,000 estimated from this source, ₱100,000 was expected from the coinage of money, ₱13,000 from what is described as indeterminate resources, ₱9,000 from the sale of military and naval properties, and ₱30,000 surplus from the secret or special service (*servicios cerrados*) fund." Report, First Philippine Commission, Vol. I, pp. 79-81. See further Bowring, A Visit to the Philippine Islands, p. 320, for a copy of the budget for 1859; Sawyer, The Inhabitants of the Philippines, pp. 416, 417, for budget for 1896-7; and for a present view, Churchill *v.* Rafferty (1915), XIV O. G. 383. Copies of Spanish budgets can be seen in the Philippine General Library.

[71] Felipe Govantes, a Spanish official of long service in the islands, in his *Compendio de la Historia de Filipinas* (Manila, 1877), appendix 23 quoted by Dr. Tavera in his *Biblioteca Filipina*, 193, says:

"Many erroneously believe that the *situado* that came from Mexico to the Philippines was in consequence of a deficit in the treasury of the archipelago. We shall point out their mistake, which has been and still is of serious consequence to the Philippines. . . . The ships that carried the products of the Philippines went from Manila to Acapulco, and in the latter port the export duties were collected on the cargo from Manila as there was no custom-house in Manila; and since the expenses of the Philippines were calculated in Mexico, exactly what was needed of the amount realized from the exportation from the Philippines was transmitted, and the larger part was retained in Mexico. That which came to Manila was called the *situado*. There was then no deficit, but on the contrary a considerable surplus."

This is proved to be erroneous by Professor Bourne, X Am. Hist. Rev., January, 1905, pp. 459-461, citing numerous authorities. James

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in the course of time.[72] Tribute, at first the principal tax, with the advance of civil government, became limited to recognition of vassalage by non-Christians. Forced labor on the public works, called "polos" was abolished in 1884

A. Le Roy, XI Am. Hist. Rev., 1906, pp. 722, 723, says on the same subject:

"Referring to the previous communications to the American Historical Review on the above subject, viz., one by Professor Edward Gaylord Bourne (X, 459-461) and one by me (X, 929-932), I wish now to call attention to the subsequent publication in the Philippine Islands, 1493-1898, XXVII, of the 1637 *Memorial* of Juan Grau y Monfalcón, and to acquiesce in Professor Bourne's judgment that the data as to the Philippine budget in this document entirely prove the case for the contention that the subsidy from the treasury of Mexico to that of the Philippines was in net cash, and amounted to about a quarter of a million pesos annually. At the time of my previous communication, I had never had a chance to see the Grau y Monfalcón memorial, which Professor Bourne had consulted in *Colección de Documentos Inéditos del Archivo de Indias, América y Oceanía* (Madrid, 1866). Grau y Monfalcón's statements are not only clear enough, but the figures he adduces are conclusive on the particular points which were under discussion in the communications referred to above. The citations from the new and first English version of this memorial which are specially pertinent are to be found on pages 121 and 136 to 141 of volume XXVII of *The Philippine Islands,* 1493-1898. This and the preceding two volumes also contain other data corroborative as to the amount of the subsidy, the manner of its calculation and payment, etc.

"It is still true, however, that we lack evidence of the payment of this subsidy every year, especially throughout the eighteenth century. The citations from various authorities down to the early part of the nineteenth century, made by Professor Bourne in his communication in question, create very much more than the presumption that the subsidy became a recognized feature and that it acquired a fixed value of 250,000 pesos annually. . . . There may have been, and probably were, lapses in the practice, as there were interruptions to the rule of annual communication by the trading galleons between Mexico and the Philippines." See further Bancroft, Mexico, III, 676, *n.*

[72] For historical data on this subject, see Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 357-360.

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and a personal cédula tax substituted. The tobacco monopoly was given over, and to take its place, *urbana* and industrial taxes were established. Monopoly of the opium contract, the profits of the lottery, stamped paper, and taxes on the Chinese as a class are other sources of income not continued by the American government.

Customs duties and what may be classified as internal revenue taxes furnished the bulk of the insular revenue. The Spanish tariff, under the royal decree of January 7, 1891, was composed of specific duties, surtaxes for harbor improvements, the so-called *ad valorem* taxes on imports, consumption taxes, miscellaneous charges, and export duties. Discrimination in the tariff against the poor and in favor of the rich was a striking characteristic; thus cotton cloth and rice, the natives' dress and food paid 25.6% and 18.2% respectively, while silk and prepared foods paid only 20.8% and 9.4% respectively. The sources of internal revenue were of five classes: The so-called industrial taxes; the *urbana* taxes; the stamp taxes; the sale of certificate of registration (*cédulas personales*); and the public domain. The industrial taxes and the *urbana* taxes together constituted practically an income tax of roughly 5% on the net income of persons engaged in industrial and commercial pursuits and on the owners of improved city property.

An analysis of expenditures proves interesting in the light of present conditions. Thus over one-half was paid out in salaries.[73] Developmental divisions such as public works and public instruction received scant assistance. The army and the navy ate up half of the income. Items which now fall on the home government such as army and navy, diplomatic and consular service in the Orient, the expenses of the Ministry of the Colonies, and of the

[73] See Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 214, 215 for itemized list of salaries.

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church now left to its own resources, were included. In other words fully seventy per cent of the income went to sustain functions which under the American administration are not a burden on the Philippine government.

The municipalities imposed taxes according to their necessities.[74] The municipal council could farm out[75] the collection of its taxes. The annual expenses of the municipalities were negligible. For the year 1895-1896, the budget for the municipalities totaled approximately 2,000,000 pesos. Cédulas made up four-fifths of the revenue; public instruction was the largest item on the side of expenditure. The budget for the city of Manila was

[74] "Taxes, constituting municipal funds, were collected as follows: On fisheries, on bills of sale of live stock, on rentals from town properties, licenses on billiard saloons, theaters, markets, slaughterhouses, tolls on bridges and ferries, pounds for stray animals, street-lighting and cleaning; a 10 per cent surtax was also charged on the city property tax. There were also taxes collected on agricultural lands and certain fines, which were local in their nature and created according to the necessities of the budget in each town. . . . The municipal funds were kept in the safe of the provincial government at the capital of the province, and a captain of the municipality was allowed to keep on hand only such amounts as were necessary to pay the running expenses of the municipal administration.

"The tax on rural property was imposed at a certain percentage on the assessed value of the plantation or other holding, whether cultivated or not. The rate of taxation was fixed at a meeting of the municipal council attended by the parish priest." Tavera, Census of the Philippine Islands, 1903, Vol. I, p. 368.

[75] Farming out the revenues "is a method suited only to arbitrary governments and unenlightened peoples. It may be said in general to consist in putting the collection of the revenues under general rules for the determination of individual taxes, but without any specific listing, into the hands of contractors, who are to return to the treasury a certain net result, retaining the remainder for their profit. . . . In America it would not even be proposed, much less tolerated. And, indeed, any arrangement making the collector a party in interest as to the taxes committed to him is contrary to the policy of the law." 2 Cooley on Taxation, 3d Ed., p. 831.

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then 667,538.06 pesos; for the municipalities of the Province of Albay, 23,907 pesos. A town of twenty thousand inhabitants only expended 698 pesos.[76]

The colony was on a silver standard with the peso as the standard of value.[77] Mexican currency was most prevalent, but the money of Spain and other countries also circulated. A mint began operations in the Philippines in 1861.

§ 45. Commerce[78] was much restricted owing to the Spanish policy of exclusion. The Philippines were for a long time but a link in the trade of Spain with Spanish America. Not until the latter part of the eighteenth century was Philippine trade opened to the world; not until 1834 was Manila made a free port. Exports and imports for the last five years of the Spanish régimé averaged seventy million pesos annually. The first Philippine railway line between Manila and Dagupan was officially declared open in 1892. Telegraph and cable service existed. Some fine public buildings were constructed but permanent roads were unknown.

[76] The following is a statement of the annual expenses of a *pueblo* of about 20,000 people: Secretary, at ₱8 per month, ₱96; first writer, at ₱6 per month, ₱72; two second writers, at ₱4 per month, ₱96; third writer, at ₱3 per month, ₱36; two *alguaciles,* at ₱2 per month, ₱48; total, ₱348. Six *cuadrilleros* (rural police), at ₱1.25 per month, ₱90; desk and light, about ₱5 per month, ₱60; total, ₱150. For conducting prisoners, ₱40; for public works (estimated), ₱20; for contingent expenses (estimated), ₱40; for the public feast (estimated), ₱100; total, ₱200. Grand total, ₱698. Report, First Philippine Commission, Vol. I, p. 54.

[77] See Report, First Philippine Commission, Vol. I, pp. 142-147; Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 243-260.

[78] See Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 219, 265-268; E. R. Johnson and collaborators, History of Domestic and Foreign Commerce of the United States, Vol. II, pp. 107-115; Conrado Benitez, The Old Philippines' Industrial Development.

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The Spanish policy looked more to office holding than to industrial and agricultural development.

§ 46. Education[79] began from the top and worked toward the bottom. The College of San José was founded in 1601, the University of Santo Tomás in 1619.[80] The

[79] See Report, First Philippine Commission, Vol. I, pp. 17-41, Vol. II, Exhibit VI, pp. 456-476; Worcester, The Philippines Past and Present, Vol. II, pp. 501-503; Sastrón, *La Insurrección en Filipinas y Guerra Hispano-Americana,* 1896-1899, pp. 25-27; Artigas, *La Instrucción en Filipinas.*

[80] "The formal foundation was completed by the year 1611, under the name of the College of Our Lady of the Rosary; but five years later, that name was changed by the name of the College of Santo Tomás. . . .

"Royal confirmation of the authority granted to the College by the Governor of the Islands and the Diocesan Ordinary, was obtained from Philip IV on November 27, 1623. His letter commends the work of the Institution as resulting 'in great advantage to the young, to the preaching of the Gospel, and to the education of the sons of the inhabitants.' The trained and zealous men doing such work were naturally bent on a policy of further improvement. They aimed to react the status of a university, with all of its powers, royal and pontifical, and they lost no time in petitioning the King to grant them authority and privileges to that effect.

"A brief had been issued by Pope Paul V in 1619, empowering Dominican Colleges outside of Mexico and Lima, which the Order had also founded, to confer university degrees for a term of ten years. On August 28, 1624, the Royal Council of the Indies recommended that the provisions of this brief should be extended to the provinces of Chile, New Granada, and the Philippine Islands. The recommendation was adopted by a royal decree, dated September 6, 1624. . . .

"In 1644, Philip IV, by his ambassador at Rome, petitioned the Holy See to erect the College into a University endowed with the same authority and perpetuity enjoyed by the Dominican Universities of Avila and Pamplona in Spain, and of Lima and Mexico in the New World. The following year His Holiness Pope Innocent X granted the royal petition in a notable brief, signed in Rome, 20 November, 1645.

"In 1680, the Dominicans petitioned the King (Charles II) to favor the institution with his royal patronage and protection. This

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latter, with a history and traditions older than those of any American University and with a notable career exemplified in the lives of famous graduates, became a Royal and Pontifical University and the only institution of higher learning in the Philippines. Connected with Santo Tomás University as a preparatory school was the College of San Juan de Letrán. While a University of the Philippines was proposed, the project was never brought to fruition.[81]

Royal orders regarding education were issued from time to time,[82] but as no provision was made for putting these orders into effect they all came to naught. Instruction was only given as a missionary enterprise by the parish priests and in the church schools. The reform decrees of 1863 marked a new epoch. Shortly after that date secondary instruction received an impetus by the establishment of a Normal school for men teachers[83] remaining open until 1905; the foundation of the "Ateneo Municipal" now known as "Ateneo de Manila," a progressive institution with excellent teaching granting the Bachelor's degree; and the beginning of the famous observatory. There was also a Nautical school of long standing, a school of arts and trades, a school of agricul-

was to add dignity to the University as well as to increase its efficiency and moral influence. The petition was granted in a royal decree, May 17 of the same year, and the royal document makes special mention of the degrees in Theology and the arts, as being conferred only after rigorous examinations and with commendable results." From General Bulletin of the Manila University of Santo Tomás (Royal and Pontifical), 1914-1915, pp. 3-6.

[81] Craig, History of the University of the Philippines, in Builders of a Nation, pp. 87-92.

[82] March 21, 1634, Blair and Robertson, Vol. XLV, p. 184; June 20, 1686, *Id.*, p. 186; Dec. 22, 1792, *Id.*, p. 222; etc.

[83] Andrew W. Cain, History of the Spanish Normal School for Men Teachers in Manila, 1865-1905, reprinted from the Philippine Journal of Science, April, 1914, pp. 123-171.

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ture, a Normal school for women, a school of painting, sculpture, and engraving, a military academy, and various private schools.

Primary instruction for Filipinos also secured a real foothold pursuant to the royal decrees of 1863 by the extension to the Philippines of a school system originally planned for Cuba, identical with that of Spain. There was to be at least one school for boys and one for girls in each municipality of five thousand inhabitants. The number of such public primary schools reached over two thousand with two hundred thousand pupils.[84] These figures are, however, largely superficial in their significance.[85] The final system of public instruction while not badly planned was never put into full operation.

[84] "As early as the year 1866, when the total population of the Philippine Islands was only 4,411,261, and when the total number of municipalities in the archipelago was 900, the number of public schools was 841 for boys and 833 for girls, and the number of boys attending these schools 135,098 and of the girls 95,260. And these schools were real buildings, and the pupils alert, intelligent, living human beings. In 1892 the number of schools had increased to 2,137, of which 1,087 were for boys and 1,050 for girls. I have seen with my own eyes many of these schools and thousands of these pupils. They were not 'church schools', but schools created, supported, and maintained by the Government." Speech of Hon. Manuel L. Quezon in the House of Representatives, The Philippine Bill, printed in Vol. 51, No. 268, p. 18771, November 2, 1914, Sixty-Third Congress, Second Session, Congressional Record.

[85] Jagor, Travels in the Philippines, Eng. Ed., pp. 156, 157, describes the public schools as existing about 1875 as follows: "In all the pueblos there are schools. The schoolmaster is paid by the Government, and generally obtains two dollars per month, without board or lodging. In large pueblos the salary amounts to three dollars and a half; out of which an assistant must be paid. The schools are under the supervision of the ecclesiastics of the place. Reading and writing are taught, the writing copies being Spanish. The teacher, who has to teach his scholars Spanish exactly, does not understand it himself. . . . A kind of religious horn-book is the first that is read in the language of the country (Bicol); and after that comes

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§ 47. Public order [86] was maintained by the Army, the *Guardia Civil* (Civil Guard) and the *Cuadrilleros* (local police). The Army under the Governor-General as captain-general numbered about fifteen thousand men, of which the large majority were native troops. The *Guardia Civil,* begun in 1869 and patterned after a similar body in Spain, was organized upon a military basis. Detachments scattered through the provinces acted as a force to maintain order and apprehend criminals. It numbered close to four thousand. The *Cuadrilleros* constituted the municipal police force; in Manila this force was known as the *Guardia Veterana* (veteran guard).

§ 48. Filipino participation.—Filipino and Spaniard were equal before the law. Yet in the administration of the government, the Spaniard was the ruler, the Filipino the ruled. The people of the islands took no part whatsoever in the making of the laws; excepting justices of the peace and a few positions as *fiscals* and judges,[87] held no offices of importance in the judicial service; and in the executive department, excepting a few members of

the Christian Doctrine, the reading-book called Casayayan. On an average, half of all the children go to school, generally from the seventh to the tenth year. They learn to read a little; a few even write a little: but they soon forget it again. Only those who are afterwards employed as clerks write fluently; and of these most write well." See also Tomás G. del Rosario in Census of the Philippine Islands, 1903, Vol. III, pp. 576, 593-595; LeRoy, Philippine Life in Town and Country, pp. 202-205; Report, First Philippine Commission, Vol. I, pp. 17-33.

[86] See Report of the First Philippine Commission, Vol. I, pp. 58, 59, 79, Vol. IV, pp. 33, 34; Tavera, Census of the Philippine Islands, 1903, Vol. I, p. 369; Sawyer, The Inhabitants of the Philippines, pp. 10, 11; Foreman, The Philippine Islands, 3rd Ed., 1906, p. 224; Worcester, The Philippines Past and Present, Vol. I, p. 378.

[87] "Probably not more than ten Filipinos held judicial or fiscal positions, except that of justice of the peace, under Spanish rule." Former Secretary of Finance and Justice Gregorio Araneta, appendix to Worcester, The Philippines Past and Present, Vol. II, p. 996.

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the consultative administrative council, filled only the lowest and subservient offices. All branches of the government were vested absolutely in Spain. In the administration of their own country, the Filipinos served merely as useful adjuncts.[88]

In the long years of Spanish domination, a few abortive attempts to institute representative institutions stand out in bold relief. Thus the Spanish republic of 1868 caused the establishment in Manila of an Assembly of Reformists[89] including five Filipino members, with the power to vote reforms for the colony, subject to the ratification of the home government; it accomplished nothing and soon ceased to exist. Again the Battle of Manila Bay induced one of the last acts of Spain to retain the loyalty of the people, the introduction of an *Asamblea*

[88] "Although the laws recognized no difference between the various races, nevertheless from the beginning of the nineteenth century the Spaniards claimed superiority over the Filipinos, and so taught their children. On the other hand, the Filipinos did not participate in the government of their own country; it is true that some of them at times occupied positions of importance, but these exceptions were so rare that they merely served to emphasize the fact that the automatic machinery of government was a thing apart and of which the natives served merely as adjuncts. In the towns the municipal functionaries had no choice except to convey to the people, and make them comply with the orders of the civil and military authorities of Spain, and especially with the wishes of the local curate." T. H. Pardo de Tavera, Census of the Philippine Islands, 1903, Vol. I, p. 337. "All the provincial departments and governments were filled with Peninsular Spaniards, officers who did not know the country and who were constantly relieved whenever there was a change of Ministry. There were very few Filipinos who secured positions as officers in the army and in the civil administration, or as judges and prosecuting attorneys. In the Administrative Council, a few Filipinos, who were noted more for their riches than for their learning, were ultimately nominated or appointed as members; but such positions were gratuitous, and besides that body was purely a consultative one." Mabini, *La Revolución Filipina*, p. 24.

[89] Foreman, The Philippine Islands, 3rd Ed., 1906, pp. 362, 363.

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Consultativa (Consultative Assembly) [90] into the scheme of government. This was announced in a decree by the Governor-General dated May 4, 1898, naming eighteen members "representative of Filipino leadership in professional and commercial affairs" as "Counsellors." The purpose of the Consultative Assembly, as given in the decree organizing it, was to "deliberate and report to the Governor-General upon matters of political, governmental, or administrative character upon which the said superior authority may deem it proper to consult them." It was given the faculty of "placing before the Governor-General the advisability of measures affecting the interests of the towns, always provided that it does not invade the functions of other organizations nor infringe the laws." On May 28, the Assembly held its first meeting, which consisted principally of the reading of the address of Governor-General Agustin and of the manifesto in reply of Pedro A. Paterno. A committee on rules reported and another committee spent some time in drawing up a scheme of Philippine government which virtually meant autonomy. By June 13th, its futility as an active organization had been proved.

More noteworthy than either the Assembly of Reformists or the Consultative Assembly was the Filipino representation in the Spanish Cortes.[91]

[90] Le Roy, The Americans in the Philippines, Vol. I, pp. 193, 196; Foreman, The Philippine Islands, 3rd Ed., 1906, p. 438; Captain Blunt, An Army Officer's Philippine Studies, p. 149; Sastrón, *La Insurrección en Filipinas y Guerra Hispano-Americana,* 1896-1899, pp. 434, 435. See further Calderón, *Mis Memorias sobre la Revolución Filipina,* pp. 63-65 for copy of the decree and list of members.

[91] See Blair and Robertson, The Philippine Islands, Vol. LI, pp. 279-297. The preliminary note thereof reads: "The account of the first two Cortes is drawn largely from notes made by James A. Le Roy from *Diario de la sesiones de las Cortes generales y extraordinarias,* and other sources. . . . For the first Cortes see also Montero y Vidal, *Historia General,* ii, pp. 388-390, 392, 396-398, 400-

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Three times in their history have the Philippines had such representation in the Cortes, namely for the years 1810-1813, 1820-1823, and 1834-1837. The first two periods were those during which the Spanish constitution was effective, while in the last instance the Cortes decided that representation in that body should be discontinued.[92] "In all three periods, one cannot point to any single great measure that was enacted solely at the initiative of the Philippine representatives (unless with the possible exception of the suppression of the Acapulco galleon) and indeed, not to a great many in which they took part." [93]

In the first period due to the distance and the impossibility of regularly appointed delegates reaching Spain in time for the opening of the session, two substitutes were designated for the Philippines from residents of the islands then in the peninsula; meanwhile a representative, Ventura de los Reyes, was duly chosen by the central board created for this purpose by the Royal Decree of May 6, 1810, and set out immediately for Spain. The two substitutes took but little part in affairs; Delegate Reyes, on the other hand, despite his seventy years, was on the whole an active representative.[94] Nine new depu-

409, 411-413, 422-435, and *Guia oficial de España,* 1813, pp. 21, 22, where the Philippine deputies are named. For the second Cortes, see also Montero y Vidal, *ut supra,* ii, pp. 444-452, 457-462, 476-481. For the third Cortes, see Montero y Vidal, *ut supra,* ii, pp. 544, 545, 552-560, 563-573; and *Filipinas y su representación en Cortes* (Madrid, February 8, 1836), which although published anonymously is by Camba." Also for the second and third periods, Mariano Ponce, Ferdinand VII and the Filipino Delegates, in *Efemérides Filipinas,* pp. 88-91; and for sources, Kalaw, *Documentos Constitucionales sobre Filipinas,* first part and files.

[92] See Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 322, 323; Ponce, *Efemérides Filipinas,* pp. 88-91; Kalaw, *Documentos Constitucionales sobre Filipinas,* first part, for historical data.

[93] LI Blair and Robertson, p. 280.

[94] See Kalaw, *supra,* pp. 13-16, 21, quoting from Montero y Vidal, *Historia de Filipinas.*

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ties with three substitutes had been elected before notice of the suppression of the constitution reached Manila.

In the session of the Cortes for 1820-1821, the colony was again represented by two substitutes. Later after the seating of Vicente Posada as a regularly elected representative from the Philippines had been contested, at the first preliminary meeting of the special session, held October 1, 1822, Francisco Bringas y Taranco, *ex-alcalde mayor* of Ilocos, the deputy elect for Nueva Segovia, Manuel Sáenz de Vizmanos, senior accountant of the *Tribunal de Cuentas* of the Philippines, Posada and one other, name unknown,[95] presented their credentials, which were approved on October 3rd, although Posada was again contested. Complaint was made that the Philip-

[95] Foreman, The Philippine Islands, 3rd Ed., 1906, p. 362, states that seventeen delegates were elected; he names eight. Ponce, *Efemérides Filipinas,* pp. 88-91, names all seventeen: Vicente Posada, Eulalio Ramirez, Anselmo Jorge Fajardo, Roberto Pimentel, Esteban Marquez, José Florentino, Mariano Pimpin, Felipe Urbano de Leon, Camilo Pividal, Francisco Bringas, José Pedroso, Juan Bautista Casal, Cristobal Padilla, Mariano de los Reyes, Domingo Fernandez, Manuel Sáenz de Vizmanos and José Azcárraga. Blair and Robertson in Vol. LI, p. 292, note 274, say that this is confusing the electors with the representatives. At least only three whose names are known proceeded to Spain.

Ponce, *loc. cit.,* quotes and describes the election rules of January 26, 1821, as follows:

"Upon this document were stamped these words, which are worthy of being remembered even in these days:

" 'The Delegates of the Cortes, and members of the provincial Deputation should be chosen in this capital of the province by the electors of all its Districts, according to article 78 of the Constitution; and solely with the object in view of facilitating the elections, the Council has for such purpose only made the most convenient division of the territory within its jurisdiction in the electoral Provinces, and has designated in each one of them the city or town where the electors of the Districts should assemble to elect the Delegates. But, as this method depends purely upon chance and is designed to spare the electors the responsibility that its fate will depend in great measure

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pines had elected but four deputies instead of twenty-four.

In the last period the election for the Philippine representatives (March 1, 1835) resulted in the choice of General Andrés García Camba, and the lawyer Juan Francisco Lecaroz—the first a resident of Manila and the second the Madrid agent for the Manila *Ayuntamiento*. On the 24th of November of the same year Camba and Lecaroz took the oath, the former being placed on the committee on etiquette. On March 9, 1837, the elections at Manila resulted in Camba and Luis Prudencio Alvarez y Tejero, formerly of the Manila *Audiencia*, and a resident of Manila for thirteen years, being elected. The latter arrived in Spain after the passing of the law excluding the Philippine representatives from the Cortes.

After 1837 the Philippines had no representation in the Cortes. But repeated attempts to revive the right were

upon their success in choosing the right Delegates, and never losing sight of this important consideration, they should stop their ears to the suggestions of the enemies of the representative system adopted by our Catholic Monarch; to the persuasion of the authorities; to the voice of love and the spur of ambition and interest, in order to discover from the heights of impartiality who of the citizens native or domiciled in the Philippines are the best fitted to represent the nation on account of their merit and virtue, their learning and their disinterested love for the country and the Constitution; of distant parts, the expenses and inconveniences in having to move from Manila, it cannot be said that they alter, vary, nor modify in any manner the circumstances which should concur in the Deputies to the Cortes and members of provincial Deputies, according to articles 91 and 330 of the Constitution.'

"These *Instructions* provide that a delegate be elected for every seventy thousand souls; on this basis, it came out that 24 *propietarios* (delegates proper) and 8 *suplentes* (substitutes) were those that were to be elected for the whole electoral province of the Philippines, to wit: 9 *propietarios* and 3 *suplentes* for Manila; 6 of the former and 2 of the latter for Nueva-Segovia; 4 and 1 for Nueva-Cáceres, and 5 and 2, respectively, for Cebú."

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made. On May 25, 1869, an amendment granting parliamentary representation to the Philippines was presented by Julian Pellón y Rodriguez. The proposed Republican constitutions of 1872 and 1873 were favorably inclined to the privilege. Again on March 3, 1890, the Deputy Francisco Calvo Muñoz submitted an amendment to the bill reforming the Electoral Law then under discussion, authorizing three deputies to the Cortes from the islands, and establishing conservative conditions to guarantee the wealth and culture of the voters.[96] Notwithstanding Ramos Calderón, the chairman of the committee on elections, and Manuel Becerra, the Minister of the Colonies, spoke in favor of the amendment, it was withdrawn without a vote. As a last effort, through the activities of the Filipino Association of Madrid and the review "La Solidaridad," fifty-two petitions[97] praying for the restoration of parliamentary representation for the Philippines, were presented to the Cortes by the Deputy Emilio Junoy in its session of February 21, 1895. The same deputy shortly after submitted a bill, providing for thirty-one deputies and eleven senators for the Archipelago, which received scant consideration from the government. The Filipino prayer eloquently stated by Del Pilar was "in exchange for the loyalty of so many generations, in exchange for so much blood shed for Spain, the present generation does not ask for anything which will mean a sacrifice to the metropolis of its ideals, nothing which should impose any burden on its interests at all; it does not ask anything but a little consideration, it only asks to have its voice heard, that it be allowed to express its necessities

[96] See a Volume entitled "Felipinas en las Cortes," speeches delivered in the Congress of Deputies on the Parliamentary Representation of the Philippine Archipelago, with an excellent prologue by Marcelo H. del Pilar.

[97] Described, and quoted from by Ponce, Our Representation in the Cortes, *Efemérides Filipinas,* pp. 185-187.

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by means of representatives freely elected by the vote of the interested parties." [98] But the grant of what to the Filipinos appeared as a natural right, failed. And the failure brought an end to peaceful agitation, caused minor revolts, and eventually came to be one of the fagots which kindled the national conflagration.

§ 49. Judgment.—Nothing is easier than to stand on the summit of present knowledge and there ruthlessly and uncharitably condemn the mistakes of a past era. It is a common practice for some American writers, with superficial knowledge or exaggerated patriotism, to exalt American superiority by deepening Spanish inferiority. American success requires no such artificial bolstering to perpetuate its accomplishments. Spanish failure, if such there be, at least merits a decent trial and a just verdict. Indeed the ideals existent during the height of Spanish power are so contrary to those of the present age that a fair comparison is impossible. One must in all justice remember that Spain could give no more than she herself possessed. In a state of decline herself, Spain could not govern the Philippines any more wisely, until she had cut out the decay of the home government. The point of view almost predetermines the conclusion. The eminent Spanish historian, Colmeiro, well says in self-defense, "We have dissimulated neither the faults nor the errors committed by the Spanish in America—from which the peoples who founded colonies in those days were not exempt, because they had their roots in the age and in the system. But those authors are writing with passion, and merit little credence, who paint us as ferocious wild beasts, or at least as barbarians thirsting for blood and gold, and forgetting good works." [99]

[98] See note 96.

[99] *Historia de la Economía Política en España*, 1863, II, 421, 422. With analogous result Spanish achievement in the Americas is sym-

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The foregoing is not intended as *apologia* to gloss over Spanish incompetency. Nor should it be taken for granted that there were not defects—grave defects—in the Spanish administration. Even an author such as Captain Blunt who would paint as bright a picture as possible, states—"That the Filipino Colonial government, according to Anglo-Saxon standards, was defective in its machinery is a fact. That many of its officials may have been corrupt is beyond question." [100] Spain stands charged in the first instance with gross negligence for not having adopted the progressive methods of other countries. Professor Keller of Yale University, condensing the leading secondary authorities on the Philippines, comes to the conclusion that "for decades before the end of Spanish domination, the government was plainly and sordidly mercenary, corrupt, and inefficient, and it takes an extremely benevolent observer to detect any more than ephemeral and accidental superiorities in its operations, from the period immediately succeeding the conquest up to 1898. It may have been relatively no worse at the outset than many of its contemporaries, but it showed no tendency to adapt itself to new conditions and thus incurred the reprehension and contempt of those nations

pathetically analyzed in chapters XIII, XIV, XV, Bourne, Spain in America, concluding as follows:

"Without a prolonged and detailed discussion it would be difficult to reach a general conclusion on the government and administration of Spanish-America. Severe judgments have been passed upon it. Justice was slow and uncertain; the evidence of financial corruption, especially of bribery of judges, all, the general impression derived from the narratives of English residents in New Spain and other early travellers is that they observed no particular contrast between governmental conditions in Europe and America. It is the opinion of the writer that, all things considered, Spanish-America was quite as well governed as was Spain, and was, on the whole, more prosperous." p. 242.

[100] An Army Officer's Philippine Studies, p. 37.

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which at least professed more modern ideals." [101] The most common indictment is that of corruption, particularly in the branch where integrity should be the prime essential, the judiciary. "The foulest blot upon the Spanish Administration in all her former colonies was undoubtedly the thorough venality of her infamous Courts of Justice." [102] Yet corruption was undoubtedly the exception and not the rule, as witnesseth the testimony of the German Jagor: "I had also the good fortune to fall in with a model Alcalde, a man of good family and of most charming manners; in short, a genuine *caballero*. To show the popular appreciation of the honesty of his character, it was said of him in Sámar that he had entered the province with nothing but a bundle of papers, and would leave it as lightly equipped." [103] A further count in the indictment against Spain is excessive centralization, with a plethora of official parasites, yet with no representative institutions in which the Filipinos might participate or voice their needs.[104] Whatever be the

[101] Keller, Colonization, p. 358.

[102] Sawyer, The Inhabitants of the Philippines, p. 24. Enlarged upon in chapters IV and V of the same work. Pinto de Guimares wrote in the Paris Review of Reviews: "The only ambition of the Spanish officials in these islands was to make as large fortunes as possible during their terms of from three to six years' service, and then return to Spain to escape the curses of the natives. The notorious General Weyler was three years Governor-General of the Philippines at an annual salary of $40,000. Weyler, after disbursing large sums for personal expenses and generous subscriptions to various public works and charities, returned to Spain with a fortune estimated by his personal intimates at from $2,500,000 to $3,000,000." Hubert Howe Bancroft, The New Pacific, p. 249.

[103] Travels in the Philippines, Eng. Ed., p. 89.

[104] "The most prominent defects in this scheme of government were:- (1) The boundless and autocratic powers of the Governor-General; (2) the centralization of all governmental functions in Manila; (3) the absence of representative institutions in which the Filipinos might make their needs and desires known; (4) a pernicious

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judgment on these charges a more serious allegation which, according to all impartial critics stands proved, is that the Spanish government took the substance of the people in the form of taxes and tribute, used the contributions for the benefit of the governing class, and gave no equivalent to the governed in the form of social improvement or economic development. Says Jagor, "The crown itself, as well as its favourites, thought of nothing but extracting the most it could from the colony, and had neither the intention nor the power to develop the natural wealth of the country by agriculture and commerce." [105] Says Reinsch, "The Spanish government in the Philippines degenerated into a mere taxing machine, totally unproductive in its character, since practically none of the funds collected from taxation found their way into internal improvements." [106] Says Tavera, "The Philippines were for Spain and for Spain alone." [106a] Yet even against such reliable authorities as Jagor, Reinsch, Tavera, and others it is but fair to state that the declining years of Spanish sovereignty saw increasingly larger sums set aside for public works and public instruction.

It is proper to acknowledge freely the more than counter-balancing merits [107] of the Spanish administra-

system of taxation; (5) a plethora of officials who lived on the country and by their very numbers obstructed, like a circumlocution office, the public business they professed to transact; (6) division of minor responsibilities through the establishment of rival boards and offices; (7) the costliness of the system and the corruption it bred; and (8) confusion between the functions of the state and the functions of the church and of the religious orders." Report of the First Philippine Commission, pp. 81, 82.

[105] Travels in the Philippines, Eng. Ed., p. 16.

[106] World Politics, p. 321.

[106a] 174 No. Am. Rev. Jan., 1902, p. 73.

[107] See generally, Blunt, An Army Officer's Philippine Studies, Second paper; Sastrón, *La Insurrección en Filipinas y Guerra Hispano-Americana en el Archipiélago,* Ch. 2.

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tion. In the first place, the Spanish rule was generally a mild one, partaking of a patriarchal character.[108] The scandalous cruelties of South America were not perpetrated. Unlike North America, the native races were not only not extirpated, but increased many fold. "While the colonies of other European peoples regularly caused the extirpation of the barbarous natives wherever they encountered them, the Spaniards succeeded not only in preserving them but also in converting and civilizing them, besides fusing them into strong mixed races." [109] The governors and the governed married, mingled socially, and worshipped together.[110] Negatively, slavery

[108] Jagor, Travels in the Philippines, Eng. Ed., p. 39; Manuel L. Quezon, Resident Commissioner to the United States, Hearings before the Committee on the Philippines, United States Senate, Sixty-third session, pp. 253, 254.

[109] Wilhelm Roscher, *Kolonien, Kolonial Politik und Auswanderung,* 1885, Chapter on the Spanish Colonial System, translation by Professor Bourne, pp. 7, 8.

[110] Sir John Bowring, who was long Governor of Hongkong, was impressed with the absence of caste: "Generally speaking, I found a kind and generous urbanity prevailing,—friendly intercourse where that intercourse had been sought,—the lines of demarcation and separation less marked and impassable than in most oriental countries. I have seen at the same table Spaniard, Mestizo and Indian—priest, civilian, and soldier. No doubt a common religion forms a common bond; but to him who has observed the alienations and repulsions of caste in many parts of the eastern world—caste, the great social curse—the binding and free intercourse of man with man in the Philippines is a contrast worth admiring." A Visit to the Philippine Islands, 1859, p. 18. "I doubt if there was any colony in the world where as much intercourse took place between the governors and the natives, certainly not in any British colony, nor in British India, where the gulf ever widens. In this case, governors and governed professed the same religion, and no caste distinctions prevailed to raise a barrier between them. They could worship together, they could eat together, and marriages between Spaniards and the daughters of the native landowners were not unfrequent. These must be considered good points, and although the general corruption and in-

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and barbarous practices were eradicated. Affirmatively and above all, Latin civilization was implanted. This found its principal avenues through the results of Christianity; the unifying influence of a central administration; modern laws; education, although not universal; an increased commerce; freedom for women far in advance of other Oriental countries;[111] the introduction of staple agricultural products; and contact with the outer world.

Comparison with the Portuguese and Dutch Colonies, with India, and with the peasants of Europe of the same time have been made to the advantage of the Philippines.[112] The famous French explorer of the Pacific, La Pérouse, who was in Manila in 1787, wrote: "Three million people inhabit these different islands, and that of Luzon contains nearly a third of them. These people seemed to me no way inferior to those of Europe; they cultivate the soil with intelligence, they are carpenters, cabinet-makers, smiths, jewelers, weavers, masons, etc. I have gone through their villages and I have found them kind, hospitable, and affable."[113] Coming down nearly a generation later, the Englishman Crawfurd, the historian of

eptitude of the administration was undeniable, yet, bad as it was, it must be admitted that it was immeasurably superior to any government that any Malay community had ever established." Sawyer, The Inhabitants of the Philippines, pp. 12, 13.

[111] "It is perfectly safe to say that in no other part of the Orient have women relatively so much freedom or do they play so large a part in the control of the family or in social and even industrial affairs. . . . There seems every reason for ascribing this relative improvement in the position of woman in the Philippines as compared with surrounding countries in the Orient to the influence of the Christian religion." Le Roy, Philippine Life in Town and Country, p. 49.

[112] See E. G. Bourne, Historical Introduction to Blair and Robertson, The Philippine Islands, Vol. I, pp. 70-73.

[113] *Voyage de la Pérouse autour du Monde,* Paris, 1797, ii, p. 347.

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the Indian Archipelago, who lived at the court of the Sultan of Java as British resident, said: "It is remarkable that the Indian administration of one of the worst governments of Europe, and that in which the general principles of legislation and good government are least understood,—one too, which has never been skillfully executed, should, upon the whole, have proved the least injurious to the happiness and prosperity of the native inhabitants of the country. This, undoubtedly, has been the character of the Spanish connection with the Philippines, with all its vices, follies, and illiberalities; and the present condition of these islands affords an unquestionable proof of the fact. Almost every other country of the Archipelago is, at this day, in point of wealth, power, and civilization, in a worse state than when Europeans connected themselves with them three centuries back. The Philippines alone have improved in civilization, wealth, and populousness. When discovered most of the tribes were a race of half-naked savages, inferior to all the great tribes, who were pushing, at the same time, an active commerce, and enjoying a respectable share of the necessaries and comforts of a civilized state. Upon the whole, they are at present superior, in almost everything, to any of the other races." [114] The German naturalist Jagor, who visited the Islands in 1859-1860, wrote: "Assuming the truth of the above sketch of pre-Christian culture, which has been put together only with the help of defective linguistic sources, and comparing it with the present, we find, as a result, a considerable progress, for which the Philippines are indebted to the Spaniards." [115] The Aus-

[114] History of the Indian Archipelago, etc., by John Crawfurd, F. R. S. Edinburgh, 1820, Vol. ii, pp. 447, 448.

[115] Travels in the Philippines, Eng. Ed., p. 151.

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trian professor, Ferdinand Blumentritt wrote in "La Solidaridad" of October 15, 1899, to this effect: "If the general condition of the civilization of the Tagalos, Pampangos, Bicoles, Bisayans, Ilocanos, Cagayanes, and Sambales, is compared to the European constitutional countries of Servia, Roumania, Bulgaria and Greece, the Spanish-Filipino civilization of the said Indian districts are greater and of larger extent than of those countries." Finally, writing from historical perspective, the foremost American scholar on the Philippines gives the following résumé of the results of the Spanish administration: "The Spaniards did influence the Filipinos profoundly, and on the whole for the better. There are ways, indeed, in which their record as a colonizing power in the Philippines stands to-day unique in all the world for its benevolent achievement and its substantial accomplishment of net progress. We do not need to gloss over the defects of Spain, we do not need to condone the backward and halting policy which at last turned the Filipinos against Spanish rule, nor to regret the final outcome of events, in order to do Spain justice. But we must do full justice to her actual achievements, if not as ruler, at any rate as teacher and missionary, in order to put the Filipinos of to-day in their proper category." [116] Frenchman, Englishman, German, Austrian, American, not to mention Spanish and Filipino writers, agree in a deserved tribute to the work of Spain in the Philippines.

The natives of the Philippines, after over three hundred years of Spanish rule, emerged far in advance of their pre-Spanish culture. Materially, they had increased in numbers from about half a million in 1591 to nearly

[116] Le Roy, Philippine Life in Town and Country, 1905, pp. 6, 7.

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seven million at the opening of the twentieth century,[117] and to an unascertainable degree in economic and agricultural conditions. Intellectually, they had improved until some had acquired advanced learning and the general literacy was fair. Spiritually, they had acquired the blessing of a common faith. All this and more is the debt which the Filipino people owe to Spain.

[117] GROWTH OF POPULATION.

Year	Population	Authority	Per cent of Annual Increase
1591	667,612	*Encomiendas* or slave holdings.	
1735	837,182	(Church census)	
1799	1,502,574	(Buzeta)	
1800	1,561,251	Zúñiga	3.9
1808	1,741,234	Cédulas (e. g. poll tax)	1.4
1812	1,933,331	Cédulas " " "	2.6
1815	2,052,994	Cédulas " " "	2.0
1817	2,062,805	Cédulas " " "	0.2
1819	2,106,230	Cédulas " " "	2.1
1829	2,593,287	Church	2.1
1840	3,096,031	Local Officials	1.6
1845	3,434,007	Buzeta	2.1
1848	3,745,603	Arenas	2.9
1850	3,857,424	Buzeta	1.5
1858	4,290,371	Bowring	1.8
1870	4,712,006	*Guia Oficial*	0.8
1876	5,501,356	Church	2.6
1877	5,567,685	Census	1.6
1885	5,839,383	Church	1.0
1887	5,984,727	Census	1.2
1891	6,252,957	*Guia Oficial*	1.1
1893	6,333,584	*Guia Oficial*	1.8
1894	6,490,585	Church	2.5
1899	6,703,311	Father Algué	0.7
1903	6,987,686	Census	1.2
	(7,635,426)		
1916	8,000,000	Estimate	..

See Wright, A Handbook of the Philippines, Appendix, p. 381.

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CHAPTER 4.

THE REVOLUTIONARY GOVERNMENT.

§ 50. Historical setting.
51. Causes of revolutions against Spain.
52. Desire for independence.
53. Rise of Philippine nationality.
54. Causes of revolution against the United States.
55. The dictatorial government.
56. Course of events under the revolutionary government.
57. Parties.
58. The dictator and president.
59. Cabinets.
60. Foreign delegates.
61. The revolutionary congress.
62. The Malolos constitution.
63. Governmental activities.
64. Class of government.
65. Character of government.

§ 50. Historical setting.—There have been a large number of local insurrections in the Islands.[1] In 1872[2]

[1] "The political revolution of the Philippines is of recent origin. It may be said that its formation began only from the opening of the Suez Canal which was inaugurated in November, 1869. The previous uprisings were caused by grievances or harm inflicted to a certain locality or to specified persons and not for the necessity of political reforms generally felt throughout the country. For this reason, they never went beyond mere local disturbances." Mabini, *La Revolución Filipina,* Ch. II, quotation at p. 7. See generally for a description of events in the different insurrections, Foreman, The Philippine Islands, 3rd Ed. (1906), Chs. XXII, XXIII, XXIV, XV, XXVII. For a Spanish view of the insurrections, see *"La Insurrección en Filipinas y Guerra Hispano-Americana en el Archipiélago por Manuel Sastrón."*

[2] See Artigas, *Los Sucesos de 1872;* Mabini, *La Revolución Filipina,* pp. 15-19.

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came a revolt in Cavite Province, which failed at once, but which had far reaching results because of a revival on a larger scale in 1896.[3] This later uprising was temporarily checked by the "Treaty of Biak-na-bato."[4] Its

[3] See Mabini, *La Revolución Filipina,* Ch. VIII.

[4] Aguinaldo in his *Reseña Verídica de la Revolución Filipina* (True Review of the Philippine Revolution), published at Tarlac on September 23, 1899, says of the treaty: "Don Pedro Alejandro Paterno (who was appointed by the Spanish Governor-General sole mediator in the discussion of the terms of peace) visited Biak-na-bató several times to negotiate terms of the treaty, which, after negotiations extending over five months, and careful consideration had been given to each clause, was finally completed and signed on December 14, 1897, the following being the principal conditions:

"1. That I would, and any of my associates who desired to go with me, be free to live in any foreign country. Having fixed upon Hongkong as my place of residence, it was agreed that payment of the indemnity of $800,000 (Mexican) should be made in three instalments; namely $400,000 when all the arms in Biak-no-bató were delivered to the Spanish authorities; $200,000 when the arms surrendered amounted to eight hundred stands; the final payment to be made when one thousand stands of arms shall have been handed over to the authorities and the *Te Deum* sung in the Cathedral in Manila as thanksgiving for the restoration of peace. The latter part of February was fixed as the limit of time wherein the surrender of arms should be completed.

"2. The whole of the money was to be paid to me personally, leaving the disposal of the money to my discretion and knowledge of the understanding with my associates and other insurgents.

"3. Prior to the remainder of the insurgent forces evacuating Biak-na-bató Captain-General Primo de Rivera should send to Biak-na-bató two generals of the Spanish army to be held as hostages by my associates who remained there until I and a few of my compatriots arrived in Hongkong and the first instalment of the money payment (namely, $400,000) was paid to me.

"4. It was also agreed that the religious corporations in the Philippines be expelled and an autonomous system of government, political and administrative, be established, though by special request of General Primo de Rivera these conditions were not insisted on in the drawing up of the treaty, the general contending that such concessions would subject the Spanish government to severe criticism and

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recrudescence was made possible by the germination of the seeds of discontent in the Islands, by the activities of *"La Junta Patriótica"* at Hongkong, and by the return of Aguinaldo and thirteen companions on an American vessel on May 19, 1898.

§ 51. Causes of revolutions against Spain.—The Filipino viewpoint, and not a foreign interpretation [5] of what the Filipinos should have asked for and been contented with, is here essential. Primarily, in the words of Dr. Apacible, the revolution "was an uprising devoid of every feeling of hatred and revenge toward Spain, the country that we respected and loved; it was a revolt against her bad government." [6] And this, Commissioner Quezon says, can be excused, because "we all know that Spain herself had, at that time at least, a poor system of government. So that she just transplanted to the Philippine Islands the wrongs of her own system." [7]

Jose Rizal in his "The Philippines a Century Hence"

even ridicule." Quoted in Robinson, The Philippines: The War and The People, pp. 33, 34, Notes; Wildman, Aguinaldo—A Narrative of Filipino Ambitions, p. 46. Negotiations as told Foreman by Pedro Paterno, the mediator, given in Foreman, The Philippine Islands, 3d Ed. (1906) pp. 395-399. Treaty described by General Greene in Senate Document 62, 55th Cong., 3d Sess., p. 431; by Consul Wildman, U. S. Consul at Hongkong, *Id.*, p. 337; by Felipe Agoncillo, *Id.*, pp. 230, 231; and by Calderón, *Mis Memorias sobre la Revolución Filipina*, pp. 9-18. Primo de Rivera and other Spanish authorities have denied that any promises as to reforms in the government were made.

Biak-na-bató is situated in the mountains about a mile north of San Miguel de Mayumo, Bulacán.

[5] The Spanish view can be found in Sastrón, *La Insurrección en Filipinas y Guerra Hispano-Americana en el Archipiélago*, Ch. IV *et seq.*

[6] Galicano Apacible, June, 1900, in an Address "To the American People," p. 6.

[7] Hearings before the Senate Committee on the Philippines, 1915, p. 254.

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(pp. 62 *et seq.*) described the reforms asked from Spain as follows:

"The Philippines, then, will remain under Spanish domination, but with more law and greater liberty, or they will declare themselves independent, after steeping themselves and the mother country in blood. The minister, then, who wants his reforms to be reforms, must begin by declaring the press in the Philippines free and by instituting Filipino delegates. We say the same about the Filipino representatives.

"These are the two fundamental reforms, which, properly interpreted and applied, will dissipate all clouds, assure affection toward Spain, and make all succeeding reforms fruitful. These are the reforms *sine quibus non.*

"Offices and trusts should be awarded by competition, publishing the work and the judgment thereon, so that there may be stimulus and that discontent may not be bred. Then, if the native does not shake off his indolence he can not complain when he sees all the offices filled by *Castilas.*

"Therefore, we repeat, and we will ever repeat, while there is time, that it is better to keep pace with the desires of a people than to give way before them; the former begets sympathy and love, the latter contempt and anger. Since it is necessary to grant six million Filipinos their rights, so that they may be in fact Spaniards, let the government grant these rights freely and spontaneously, without damaging reservations, without irritating mistrust."

Apolinario Mabini, probably best qualified of Filipinos to voice their sentiments, writing from Manila on January 11, 1900, said:

"We will briefly state the historical why and wherefore of the Philippine revolution, as necessary in order to better understand the means of improvement that may be offered to the Filipinos. The death of three Philippine

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priests, Burgos, Gomez and Zamora (shot in 1872), produced a notable change in the sentiments of the people. El Padre Burgos had been extremely popular because he defended the rights of the native clergy; his violent death, therefore, was deeply felt, and produced a general protest of indignation. It is true that this protest did not pass beyond the four walls of the native's house and the narrow circle of confidential friends, because the Spanish authorities kept most cruel punishments in reserve for that kind of manifestation of independent judgment on the part of natives, but just because the general indignation could not utter itself it grew more and more in intensity.

"Later on several young Filipinos went to Spain, not only in search of higher education, but also to expose to the Spanish public the real wants of the Philippine people, which, instead of being given attention to, had been studiously kept in the dark and repressed by the Spanish authorities at the instigation of the friars (religious corporations). Those young Filipinos, in order to make themselves heard, founded a paper at the expense of the Philippine people, and demanded the regulation of the Governor-General's faculties; Philippine representation in the Spanish legislative body; liberty of press, of cults, and of association; the prohibition of certain governmental proceedings (*expedientes*), by which a man was condemned without being heard, and the domicile and correspondence violated on mere secret denunciation; the secularization of parishes (parachies); the equalization of the Filipinos to Spaniards in all political and civil rights, and in the participation of public appointments; great facilities and few obstacles for agriculture, industry, and commerce; in one word, the promulgation in these islands of the Spanish Constitution, and complete assimilation of the same equal to that of any in the Spanish provinces on the Continent.

"The Spaniards turned deaf ears on these demands

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under the pretext that they were the work of some few 'idealists,' and saying always at the instigation of the friars interested in maintaining the *status quo,* that the people were still in a savage state, just the same as nowadays the Americans will not hear the demands made by the revolutionaries, under the pretext that the insurrection is the work of only a few ambitious Tagalo leaders." [8]

Back of all was without doubt a reaching out toward the doctrines relating to the equal rights of man. Just as in the American war for Independence "the fundamental principle . . . was that the colonies were coordinate members with each other and with Great Britain of an empire united by a common executive sovereign," [10] and inability to understand this aspiration brought failure to Great Britain but success in her later dealings with

[8] Quoted in Harper's History of the War in the Philippines, p. 28; also to same effect in Mabini's *La Revolución Filipina.* See further Aguinaldo's message of June 23, 1898, quoted in Millet, The Expedition to the Philippines, pp. 49, 50; and Foreman, The Philippine Islands, 3d Ed. (1906) pp. 448, 454, 455. Also Report, First Philippine Commission, Vol. I, p. 84. "It (the revolution) was seeking the separation of the church and the state—the people did not want the friars to continue being the official agents of the government in the general governing of the provinces and municipalities. It also demanded more and better public schools, where the Spanish language would be actually taught, and more opportunity for the Filipinos to take part in the government of the Philippine Islands." Quezon, *supra.* "In assigning a cause for the revolt of 1896-98, nearly all writers, English and American, give the same as they gave for that of 1872, namely 'the friars' and their 'intermeddling in politics.' But while the friars may indirectly have had something to do with it, they were by no means its principal or even its secondary cause. . . . As a matter of fact, the loss by Spain of her two principal colonies, Cuba and the Philippines, was due to the results of the revolution of 1868 in Spain itself." Captain Blunt, An Army Officer's Philippine Studies, p. 185.

[10] Madison, Writings, IV., 533.

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Canada, Australia, and South Africa, so in the Philippine Revolution there was uppermost "the idea that the Filipino people should have the same political and civil rights as the Spanish people." [11]

§ 52. Desire for independence.—In all the statements relative to the causes of the revolutions against Spain the word "Independence" does not appear. The people asked for a more liberal government and for a guarantee of fundamental human rights, not for separate existence. Again is there seen a similarity to the American Revolution, for in the commencement of that struggle, the people, acting as British subjects loyal to the King and only demanding the rights of Englishmen, scarcely any one advocated separation from the mother country.

Prior to the Revolution of 1872, excepting the Moros, no one in the Philippines thought of secession from Spain. During the period of this revolution, only the slightest manifestations of a desire for separation can be found. Few Filipinos even dreamed of absolute independence. No plan was considered for the loosening of the bonds which held the archipelago to *Hispania*. On the contrary the general desire was for a closer joinder of the colony with Spain.[12]

There is a difference of opinion whether, when the Revolution of 1896 started, it aimed at the independence of the Philippines.[13] According to Le Roy "the idea of

[11] Letter of the Nacionalista Party, September 1, 1910, Appendix C, Special Report of Secretary of War Dickinson. See quotation from Mabini in above section to same effect.

[12] See Foreman, The Philippine Islands, 3d Ed. (1906) p. 363; Tavera, Census of the Philippine Islands, 1903, Vol. I, pp. 375, 379.

[13] Manuel Sastrón, *La Insurrección en Filipinas y Guerra Hispano-Americana*, p. 66, argues vehemently that there can not be recognized "other causes than the idea of independence exploited in every way

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independence" was "in the minds of the more intellectual propagandists as far back as 1890, and it was really older than that." [14] But even if this be admitted, yet it is undeniable that a popular agitation for independence did not manifest itself when the revolution of 1896 began. It was only with Aguinaldo's manifesto of October 31, 1896, entitled "Liberty, Equality, and Fraternity," given greater publicity in his manifesto of the following year, that an authoritative statement of a desire for independence is found. A portion of the manifesto of 1897 reads: "We aspire to the glory of obtaining the liberty, independence, and honor of the country." [15] All doubt as to aspirations is removed by the various proclamations of 1898. Thus following the Declaration of Independence under the Dictatorial government on June 12, 1898, we find Aguinaldo in a message on June 23, 1898, the day when the Revolutionary government was proclaimed, saying that "now they no longer limit themselves to asking for assimilation with the political constitution of Spain but ask for a complete separation." Formal expression of a desire for independence came with a meeting of municipal presidents on August 1 and action by the Congress on September

by an unjust campaign against the sovereignty of Spain by the secret societies which have strangely secured such a firm foothold among that race. We do not believe it necessary to have the intellectual faculties of reflection, which we call reason, highly developed in order to arrive at this conclusion."

[14] Le Roy, The Americans in the Philippines, Vol. I, p. 141.

[15] Quoted in Foreman, The Philippine Islands, 3d Ed. (1906) p. 394; Robinson, The Philippines: The War and the People, p. 38. "On this day, October 31st (1898), Aguinaldo most emphatically declared that he and his followers *had fought for complete independence,* and that they would shed the last drop of their blood in securing it." Major Younghusband, The Philippines and Round About, p. 75.

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29.[16] This last date was proclaimed to be that of the Filipino Independence Day.[17]

§ 53. Rise of Philippine nationality.[18]—The wielding of millions of individual Filipinos into a Filipino nation was, for centuries, a slow process. Potentialities were there but organization was lacking. The native political system was not conducive to solidarity. The Spanish policy, while beneficial in many respects, was in this particular not enthusiastically progressive. The people of the Islands possessed no education and had no model by which they could measure their civil and political rights. In the words of Mabini, the reason why the Spaniards could subjugate the Islands for three centuries was "because the Filipinos were then in complete igno-

[16] Addresses of the President of the Revolutionary Government and of the President of the Congress on this occasion quoted by Calderón, *Mis Memorias sobre la Revolución Filipina,* Appendix pp. 10-16.

[17] Foreman says of this event: "On October 1 (September 29) the *Ratification of Philippine Independence* was proclaimed at Malolos with imposing ceremony. From 6 A. M. the Manila (Tondo) railway station was besieged by the crowd of sightseers on their way to the insurgent capital (Malolos), which was *en fete* and gaily decorated with flags for the triumphal entry of General Emilio Aguinaldo, who walked to the Congress House attired in a dress suit, with Don Pedro A. Paterno on his right and Don Benito Legarda on his left, followed by other representative men of the Revolutionary Party, amidst the vociferous acclamations of the people and the strains of music. After the formal proclamation was issued the function terminated with a banquet given to 200 insurgent notabilities. The day was declared by the Malolos Congress to be a public holiday in perpetuity." (p. 470, 3d Ed., 1906.) Copies of card of invitation to banquet, cover design of menu, and the menu, reproduced in Harper's History of the War in the Philippines, pp. 72, 73.

[18] See Mabini, *La Revolución Filipina;* Mariano Ponce, *Sobre Filipinas,* in Builders of a Nation, pp. 17-52; McKinley, Island Possessions of the United States, pp. 216-230; Manuel L. Quezon, Resident Commissioner to the United States, Hearings before the Committee on the Philippines, United States Senate, 63d Session, pp. 254-257.

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rance and lived without any thought of national solidarity." [19] Rizal, in a letter to Reverend Vicente García, under date of January 17, 1891, wrote: "There is, then, in the Philippines a progress or improvement which is individual, but there is no 'national' progress." [20]

The nineteenth century saw a change almost imperceptible at first, but gradually evolving into racial consciousness. Gusts came from the rebellious storm center of Latin America. A modification of the commercial system had brought contact with other peoples and increased wealth. The opening of the Suez Canal shortened the distance between the Islands and European civilization. An extension of education had brought knowledge of a sort to many. A constantly increasing number of Filipino youths were sent to Europe for their education. In Spain they formed into clubs and, in different papers of which the fortnightly review, *La Solidaridad* of Madrid, edited by Lopez Jaena, Marcelo H. Del Pilar, and others, was the most noted, advocated progressive reforms for the Philippines.[21] Liberal democratic ideas, scanty to

[19] Letter to General Bell of August 31, 1900.

[20] Austin Craig, Letters and Addresses of José Rizal, published in Philippine Education, December, 1915, p. 312.

[21] "Referring later on to the reforms and improvements that might calm or pacify the popular anxiety, it (*La Solidaridad*) asked, among other things, that the government of the Islands should cease to be military in nature in order that it might be changed into a civil one; that the powers of the Governor-General be limited and determined by law; that the individual liberties protected by the Spanish Constitution be extended to the Filipinos; that the Islands be properly represented in the Cortes; the expulsion of the friars or at least the secularization of the parishes; a provision for competitive examinations for public employees of the Insular Government, excepting the offices of the Governor-General and the chiefs of Departments which should always be occupied by Spaniards; there ought to be given some examinations in Spain for the filling of one half of the vacant positions in the Islands and other examinations to be given in

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be sure in comparison with the momentous revolutions then shaking the world, were disseminated by these returning scholars or came from radically inclined Spaniards. The conspicuous works of Rizal circulating secretly gave outward expression to suppressed feeling. *La Liga Filipina* whose aim according to its founder, Rizal, was "to promote co-operation, to promote Filipino development, social and economical" and the *Katipunan* with secessionist ends, fomented nationalism.[22] Yet, with all this advance in wealth and thought, there came to the Filipino little additional participation in the government of his country. While the Electoral Law of 1890 was adapted to the use of Cuba and Porto Rico, while as late as November 25, 1897, they were granted a constitution establishing autonomy, and while these two colonies had at least representation in the Spanish Cortes, not even such palliative reforms were permitted the Philippines.[23]

the Philippine Islands for the filling of the other half; the permanence of the positions thus created; and reform or suppression of the civil guard." Mabini, *La Revolución Filipina,* pp. 28, 29.

[22] The Katipunan is otherwise known as K. K. K., these initials representing the words *Kataastaasan Kagalanggalang Katipunan,* signifying "the very exalted and honorable union of the sons of the country." *La Liga Filipina y el Katipunan* described by Mabini, *La Revolución Filipina,* Ch. VII.

[23] "Ever since the seizure of the Philippine Islands by the Spanish government, more than three hundred years ago, the natives have been deprived of all right of local self-government, in the face of the blood treaty of 1565, granting the Philippines autonomous government and the liberties guaranteed by the Constitution of Cadiz in 1814, and have been denied the privilege of levying and collecting their own taxes, or taking any part in the direction of the proceeds of taxation, and have been controlled by governors not in sympathy with them, but, without prior acquaintance, sent to them from a nation foreign in thought to themselves. Unlike even the Island of Cuba, they have been denied any shadow of participation in the affairs of government through having a membership in the Spanish

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From such actual extension of ideas and ideals, from the stubborn opposition of Spanish officialdom to change, from the intercourse of Filipino with Filipino, and finally from the martyrdom of Rizal, there burst a Philippine nationality which found itself as such in the common cause of revolution.

§ 54. Causes of revolution against the United States.—With insurrections against Spain fomenting in the Islands at the time of the outbreak of the Spanish-American War, with the development of racial unity and of an ideal-independence, and with the United States insisting on recognition of American sovereignty, the only way by which war could have been avoided would have been by diplomatic negotiations leading to an American protectorate or to a government under American guidance for a limited period. A war under such conditions is not to the discredit of either party. The United States had to fight to command respect for herself as a nation, while as to the contest of the Filipinos for the possession of their country, all fair-minded men will agree with Senator Hoar in an address before Congress in which he said: "Mr. President, there is one mode by which the people of the Philippine Islands could establish the truth of the charges as to their degradation and incapacity for self-government which have been made by the advocates of Imperialism in this debate, and that mode is by submitting tamely and without resistance to the United States." [24]

An irritating factor was the question—Was independence promised? This point has since become one of con-

Cortes." Memorandum of Felipe Agoncillo relative to the right of the Philippine Republic to recognition, accompanying letter to the Honorable the Secretary of State, of date January 11, 1899, p. 9.

[24] Quoted in Forbes-Lindsay, America's Insular Possessions, Vol. II, pp. 178, 179.

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troversy. General Aguinaldo,[25] Judge Blount[26] and others have upheld the affirmative, which Admiral Dewey,[27] Secretary Worcester[28] and others have bluntly denied. What is undoubtedly true, is that the United

[25] See Answer to Paterno's Manifesto from the Consultative Assembly of June, 1898; Appeal Addressed to the Civilized Nations, September 23, 1899, quoted in Harper's History of the War in the Philippines, pp. 85-90; Aguinaldo's True Review of the Philippine Revolution; and Agoncillo's Memorial to the U. S. Senate of January 30, 1899, quoted in Kalaw, The Case for the Filipinos, pp. 64-78.

[26] The American Occupation of the Philippines.

[27] Admiral Dewey makes categorical denial as follows:

"Hongkong, *June* 6, 1898 (Cavite, ***June* 3**).

"Secretary of Navy, Washington:

"Receipt of telegram of May 26 is acknowledged, and I thank the Department for the expression of confidence. Have acted according to the spirit of Department's instructions therein from the beginning, and I have entered into no alliance with the insurgents or with any faction." "DEWEY."

Autobiography of George Dewey, Admiral of the Navy, Appendix E, p. 311.

"Washington, *January 30, 1900.*

"Dear Senator Lodge:—The statement of Emilio Aguinaldo, as recently published in the *Springfield Republican,* so far as it relates to me, is a tissue of falsehoods. I never promised, directly or indirectly, independence for the Filipinos. I never treated him as an ally, except to make use of him and the soldiers to assist me in my operations against the Spaniards. He never alluded to the word independence in any conversation with me or my officers.

"The statement that I received him with military honors or saluted the so-called Filipino flag is absolutely false. Sincerely yours,

"GEORGE DEWEY."

(Quoted in Harper's History of the War in the Philippines, pp. 90, 91.) See statement of similar tenor made by Admiral Dewey to the First Philippine Commission, quoted in McKinley, Island Possessions of the United States, p. 232, and in Note 7, to sec. 70 *infra.*

"The assertion that I made Aguinaldo any promises is a pure fabrication." Admiral Dewey in an interview with Edwin Wildman, quoted in the latter's book, Aguinaldo—A Narrative of Filipino Ambitions, p. 81.

[28] The Philippines Past and Present, Ch. II.

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States by properly accredited agents made no promises of independence, but that the actions of certain Americans led the Revolutionists to draw inferences, exaggerated by their hopes. General Thomas M. Anderson of the American expeditionary forces, describing the conditions on July 1, 1898, writes: "Whether Admiral Dewey and Consuls Pratt, Wildman, and Williams did or did not give Aguinaldo assurances that a Filipino government would be recognized, the Filipinos certainly thought so, probably inferring this from their acts rather than from their statements. If an incipient rebellion was already in progress, what could be inferred from the fact that Aguinaldo and thirteen other banished Tagals were brought down on a naval vessel and landed in Cavite?" [29]

The Filipino view point is no where better expressed than by Mabini, writing from Manila on January 11, 1900:

"We would ask, must the Filipino people, when grown tired of the Spanish yoke, necessarily have had no other aim in view but that of submitting themselves to a new yoke, or may they not perhaps have aspired to an improvement of their condition? Even were we to look on them as being in a savage state and devoid of all culture, we cannot possibly deny them the natural inclination towards a better life, a thing we find even in irrational beings." [30]

The American view point summarizing the entire situation is stated by President Wilson, as follows:

[29] Our Rule in the Philippines, 170, No. Am. Rev., Feb., 1900, p. 272; Harper's History of the War in the Philippines, p. 83. Mabini in his *Revolución Filipina*, pp. 63, 64, is conservative in his claims relative to a promise of independence. He speaks of vague and verbal promises by American officials. See Kalaw, The Case for the Filipinos, pp. 48, 49.

[30] Quoted in Harper's History of the War in the Philippines, p. 28. Same idea expressed in Mabini's letter to General Bell of August 31, 1900.

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"A sudden dismay and discontent had come upon the men who served with Aguinaldo outside the American lines at Manila, and who did not clearly know whether they were allies or subjects. They had not taken up arms, they said, merely to make the Americans their masters instead of the Spaniards; but to make themselves free, and had deemed the Americans their allies in that undertaking. The American commanders had made them no promises, but they had seemed tacitly to accord them the place of allies, and their own hopes had drawn the inference. When they found that those hopes were to be denied them they took their cause into their own hands and set up the government as if of an independent republic with Aguinaldo as their president." [31]

§ 55. The dictatorial government was established on the advice of Ambrosio Rianzares Bautista by a proclamation over Aguinaldo's name on May 24, 1898.[32] Such a government, according to the proclamation, was "to be administered by decrees promulgated upon my responsibility solely," until the Islands shall be "completely conquered and able to form a constitutional convention, and to elect a President and a Cabinet, in whose favor I will duly resign the authority." Prior thereto, a proclamation [33] to prepare the people for the coming of the American squadron had been sent to representative

[31] Woodrow Wilson, A History of the American People, Vol. V, pp. 297, 298.

[32] See Aguinaldo's *Reseña Verídica de la Revolución Filipina.* (True Review of the Philippine Revolution) of Sept. 23, 1899, published in Vol. 35, Cong. Record, Part 8, Appendix, p. 440. Proclamation quoted in Senate Document 62, p. 431.

[33] A portion reads:

"COMPATRIOTS: Divine Providence is about to place independence within our reach, and in a way the most free and independent nation could hardly wish for.

"The Americans, not from mercenary motives, but for the sake of humanity and the lamentations of so many persecuted people, have

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Filipinos, and the day following his arrival, Aguinaldo had issued a call to arms. The flag of the Philippines was formally unfurled and independence proclaimed in elaborate ceremonies at Cavite on June 12, 1898. A decree promulgated on June 18th, supplemented by another two days later, provided for the administration of the municipalities and provinces and for the election of representatives to the Revolutionary Congress.[34] On June 23rd, the Dictatorial gave way to the Revolutionary government with Aguinaldo as President. Aguinaldo, in the course of the proclamation providing the Constitution of the Revolutionary government, said:

"This government, desirous of demonstrating to the Philippine people that one of its objects is to abolish with a firm hand the inveterate vices of Spanish administration, substituting a more simple and expeditious system of public administration for that superfluity of civil service and ponderous, tardy and ostentatious official routine, I hereby declare as follows, viz:

"Article 1.—The Dictatorial government, shall be henceforth called the Revolutionary government, whose

considered it opportune to extend their protecting mantle to our beloved country, now that they have been obliged to sever relations with Spain, owing to the tyranny this nation is exercising in Cuba, causing enormous injury to the Americans, who have such large commercial and other interests there. . . .

"There, where you see the American flag flying, assemble in numbers; they are our redeemers.

"Our unworthy names are as nothing, but one and all of us invoke the name of the greatest patriot our country has seen, in the sure and certain hope that his spirit will be with us in these moments and guide us to victory—our immortal José Rizal." Quoted in Robinson, The Philippines: The War and the People, pp. 44, 45; and in Foreman, The Philippine Islands, 3d Ed., 1906, pp. 432-434.

[34] Aguinaldo's True Review of the Philippine Revolution; Worcester, The Philippines, Past and Present, Vol. I, pp. 246-248, citing record 206.3.

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object is to struggle for the independence of the Philippines, until all nations, including Spain, shall expressly recognize it, and to prepare the country for the establishment of a real Republic. The Dictator shall be henceforth styled the President of the Revolutionary government. . . ." [35]

Other articles provided for a Cabinet with four secretaryships and a Congress. Accompanying the constitution of the provisional government was a presidential message.[36]

[35] Quoted in Foreman, The Philippine Islands, 3d Ed., 1906, p. 448; Robinson, The Philippines: The War and the People, pp. 49, 50; Senate Document 62, pp. 432-437; Calderón, *Mis Memorias sobre la Revolución Filipina,* pp. 77-92.

[36] The conclusion is as follows:

"Thus they have constituted a revolutionary government with wise and just laws, suited to the abnormal conditions confronting them and which, at the proper time, will prepare them for a true republic. Thus, taking for its only justification the right, for its sole aid, justice, and for its only means honorable labor, the government calls upon all its Filipino sons without distinction of class, and invites them to unite solidly with the object of forming a noble society, ennobled not by blood nor by pompous titles but by labor and the personal merit of the individual—a free society where there is no place for egotism and personal politics which wither and blight, nor for envy and favoritism which debase, nor for charlatanry and buffoonery, which cause ridicule.

"No other course is possible. A people that has given proof of fortitude and valor in suffering and in danger, of industry and learning in time of peace, is not made for slavery. This people is called to be great, to be one of the strong arms of Providence in directing the destinies of humanity. This people has sufficient energy and resources to recover from the ruin and humiliation in which it has been placed by the Spanish Government and to claim a modest but worthy place in the concert of free nations.

"Given at Cavite, June 23, 1898.

"EMILIO AGUINALDO."

Quoted in Millet, The Expedition to the Philippines, pp. 49, 50; Republic or Empire, pp. 741, 742; Foreman, The Philippine Islands, 3d Ed., 1906, pp. 454, 455; and in Calderón, *supra,* pp. 77-81.

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The Dictatorial government had lasted only a little over a month. It had, however, fulfilled its mission—to initiate the revolution and to pave the way for more systematic administration.

§ 56. Course of events under the Revolutionary government.—The change to a revolutionary form of government had, of course, one well-defined purpose, to secure recognition from foreign powers. So on July 15, copies of the decrees containing the organization "best suited to the popular will" were furnished Admiral Dewey for communication to the government of the United States.[37] On the sixth of August, a memorandum addressed to foreign governments, petitioned for the recognition of belligerency and the independence of the Philippines.[38]

Events moved rapidly. Rules for the conduct of executive business were made known on June 27. The members of the cabinet were named on July 15. The "declaration of independence" was promulgated at a meeting of municipal presidents on August 1, afterwards ratified by the Congress on September 29. Congress assembled at Malolos on September 15.

The capital during this period was first at Bacoor, Cavite, but later at Malolos, Bulacan.

With the passage and executive sanction of the Malolos Constitution on January 21, 1899, the Revolutionary government was ready to merge into the Philippine Republic. But the proclamation of the President of the United States issued by the Commanding General on January 4, 1899, explicitly claiming sovereignty over the Archipelago, followed by the counter proclamation of

[37] See Report of the Bureau of Navigation, 1898, Appendix, pp. 111-117; Chadwick, The Relations of the United States and Spain, Vol. 2, p. 380.

[38] Quoted in Foreman, The Philippine Islands, 3d Ed., 1906, pp. 456-458; Republic or Empire, pp. 742, 743.

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Aguinaldo the next day,[39] together with the hostilities which broke out in February, made realization of this hope impossible of attainment.

The dissolution of all pretense at governmental form came with the capture of General Aguinaldo at Palanan, Cagayan Valley, on March 23, 1901, by General Funston, with a force of eighty-eight men, mostly Macabebe scouts.[40] Thereupon, "entirely of his own volition, and not under pressure of any kind, he (Aguinaldo) issued a manly and well-written proclamation advising his subordinates to give up the struggle that had wrought such harm to the country, and to accept the sovereignty of the United States."[41] On April 1st following, Aguinaldo took the oath of allegiance to the United States.[42] This important event accelerated the close of the war. The proclamation of the President of the United States of July 4, 1902, granting full and complete pardon and amnesty to all persons, as therein set forth, for political

[39] Senate Document 208, p. 103; Otis Report, 1899, pp. 76-79.

[40] Authoritatively and modestly described by General Funston in his Memories of Two Wars, Ch. VII.

On November 24, 1900, General Otis telegraphed to Washington as follows: "Claim to government by insurgents can be made no longer under any fiction. Its treasurer, secretary of the interior, and president of congress in our hands; its president and remaining cabinet officers in hiding, evidently in different central Luzon provinces, acting as banditti, or dispersed playing the role of 'amigos,' with arms concealed." Sec. of War, Annual Reports, 1900, I, pt. iv, pp. 208 *et seq.*

[41] Funston, *supra*, p. 427. Aguinaldo's letter, "To the Filipino People", is printed in the Official Gazette, for January 1, 1903, at p. 26. The conclusion reads: ". . . By acknowledging and accepting the sovereignty of the United States throughout the entire Archipelago, as I now do without any reservation whatsoever, I believe that I am serving thee, my beloved country. May happiness be thine!

"EMILIO AGUINALDO."

[42] Quoted in Foreman, The Philippine Islands, 3d Ed., 1906, p. 509.

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offenses committed in the Islands, officially recognized pacification.[43]

Mabini has said as to the causes bringing the revolution to an end: "We fought under the conviction that our duty and dignity demanded of us the sacrifice of defending, while we could, our liberties, because without them social equality between the dominant caste and the native class would be practically an impossibility, and so we should not succeed in establishing perfect justice between us; but we knew that it would not be long before we should exhaust our scanty resources and that our defeat was inevitable. War became, then, unjustifiable from the moment when the immense majority of the people preferred to submit to the conqueror and many of the revolutionists themselves passed to his ranks, because not being able to enjoy their natural liberties while the American forces prevented it, and not having the resources for removing this obstacle, they deemed it prudent to yield and to have hope in the promises made in the name of the people of the United States." [44]

§ 57. Parties.—To return to a consideration of some of the most important governmental manifestations—parties known as such did not exist. There was nevertheless always apparent two different groups, the first the Radicals or "Irreconciliables" and the second the Conservatives or "Pacificos." The former were the war party and believed in independence at any cost; the latter wanted peace, with independence if possible, but if not, the best government which peaceful means could obtain from the Spanish or American régimes. Many of the

[43] Construed in U. S. *v.* Luzon (1903), 2 Phil. 380; U. S. *v.* Pajarillo (1911), 19 Phil. 288; and other cases.

[44] Le Roy's English Translation of Mabini's "Manifesto," published in the American Historical Review, Vol. XI, 1906, p. 857. Commissioner Quezon would also give credit to the pacificatory efforts of the Second Philippine Commission.

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Conservatives left the Revolutionary government and assisted the American officials in establishing an administration. Of those then remaining in the Revolutionary government there are again seen two new tendencies, those believing in a strong centralized power (as Mabini) —the Absolutists, and those jealous of executive encroachment (as Calderón)—the Constitutionalists.

Survivals of these early groupings, indicative of methods of thought, appear subsequently in the Federalist and *Nacionalista* parties.

§ 58. The Dictator and President.—The head of the government during the entire period 1897 to 1901 was Emilio Aguinaldo y Famy. He was successively the Commanding General, the Dictator, the President of the Revolutionary government, and the President of the Philippine Republic.[45] If any one else was seriously considered for these positions, there was no manifest public movement with that end in view. President Schurman, President of the first Philippine Commission, says that "Aguinaldo enjoyed the confidence of the insurgents and their sympathizers and abettors . . . in virtue of his patriotic services, his attested honesty, and his remarkable gift of surrounding himself with able coadjutors and administrators." [46]

Analyses of the character of Aguinaldo are as contradictory as they are numerous. There are those who would deify him into one more than human. The soldier

[45] Article 97 of the Malolos Constitution provided that "the actual President of the Revolutionary Government shall henceforth assume the title of President of the Republic and shall exercise this office until, after the Constituent Assembly has been convoked, it shall have proceeded to the election of the person who is to fill the office definitely."

[46] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission before the Members of Cornell University, p. 6.

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who captured him writes that "He is a man of many excellent qualities, far and away the best Filipino I ever was brought in contact with." [47] There are others who would make of Aguinaldo a mere figurehead, the usual method for whom is to eulogize his compatriots in order to belittle his accomplishments. For example, his proclamations are spoken of ironically as "Aguinaldo, the syndicate of academic warriors." [48] Certainly full credit should be given to the able men who aided Aguinaldo—to Luna, Buencamino, Paterno, Calderón, Boautista, Agoncillo, and a long array of others—above all to Apolinario Mabini, the head of the cabinet, and the confidential adviser of Aguinaldo, variously described by foreigners and Filipinos alike as "the soul of the movement," "the ruling power behind the Presidency," "the brains of the Revolution," "Camera negra del Presidente—Black Chamber of the President," "the great Filipino 'character' produced by the Revolution," "the sublime paralytic." [49] Concede all this, and yet when impartial history is written, it must adjudge that Aguinaldo, although seeking personal aggrandizement,[50] was, as a soldier brave and sagacious, as a leader popular with the masses, as a patriot tenacious to his country's ideal until the last, as the head of a revolution, able to know his own limitations and to choose and have faith in the talents of others. As a contemporaneous foreign observer has well said, Emilio Aguinaldo "may

[47] Funston, Memories of Two Wars, p. 421.

[48] Edwin Wildman, Aguinaldo—A Narrative of Filipino Ambitions, p. 93.

[49] See lectures by Commissioner Rafael Palma on Mabini, and various foreign writers. Mabini naively mentions his appellation of "Camara negra del Presidente" in his *La Revolución Filipina,* p. 70.

[50] See Mabini, *La Revolución Filipina,* especially p. 87. Chapter X, "End and Downfall of the Revolution," was printed in *El Comercio* of July 23, 1903. Le Roy's English translation of this chapter appears in Vol. XI, American Historical Review, 1906, pp. 843 *et seq.*

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be ignorant according to a civilized standard, he may appear stolid and wanting in quick intelligence, but if we judge men by their deeds rather than by the tittle-tattle of conventional criticism, Aguinaldo has, in the face of every disadvantage, and at the early age of twenty-nine, placed himself in the ranks of the great and acknowledged leaders of popular risings, which when unsuccessful are stigmatised as rebellions, but which when successful bear the honoured title of legitimate revolutions." [51]

§ 59. Cabinets.—The Cabinet was first provisionally organized on July 15, 1898. Baldomero Aguinaldo then became Secretary of War and Public Works; Leandro Ibarra, Secretary of the Interior; and Mariano Trias, Secretary of Finance.[52] Following a decree of September 26,[53] amplifying the organic decree of the previous June 23 and prescribing the functions of the different departments, the cabinet was regularly constituted with Cayetano Arellano at its head as Secretary of Foreign Affairs.[54] Later on January 2d, 1899, the Cabinet became entirely radical in its membership, Mabini becoming Sec-

[51] Major Younghusband, The Philippines and Round About, 1899, p. 78.

[52] Calderón, *Mis Memorias sobre la Revolución Filipina,* pp. 92, 93.

[53] Quoted in Calderón, pp. 100-102.

[54] Calderón, pp. 102, 103, gives the personnel of the central government at this time as follows:

"In order to fill the positions provided for in my Decree of even date, I appoint the following gentlemen: Secretary of Foreign Relations, Mr. Cayetano S. Arellano; Director of Diplomacy, Mr. Trinidad H. Pardo de Tavera; Director of the Navy and Commerce, Mr. Pascual Ledesma; Director of War, Mr. Antonio Luna; Secretary of *Fomento,* Mr. Felipe Buencamino; Director of Public Instruction, Mr. Gregorio Araneta; Director of Justice, Mr. Arsenio Cruz Herrera; Director of Agriculture, Mr. José Alejandrino; Director of Public Works, Mr. Fernando Canon Faustino; Director of Police and Internal Order, Mr. Severino de las Alas; Director of Communications, Mr. José Vales; Director of Hygiene, Mr. José Albert; Sec-

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retary of Foreign Affairs.[55] Still later on May 9th, of the same year, the "peace cabinet" headed by Pedro A. Paterno and Felipe Buencamino came in.[56]

retary of Justice, Mr. José Baza; Director of the Registry, Mr. Juan Tongco.

"Malolos, September 22, 1898.

"EMILIO AGUINALDO."

"On October 4th, by a Decree of the Revolutionary Government, the Department of the Navy and Commerce was divided into two departments: That of the Navy and of Commerce, Pasqual Ledesma being appointed Director of the Navy, and Esteban de la Rama, Director of Commerce.

"Thus was the Revolutionary Government constituted from June to December, 1898."

Le Roy, the Americans in the Philippines, Vol. I, pp. 290, 291, says on the same subject:

"In September, the place of Secretary of Foreign Affairs in the Cabinet, which had been left open until some one with prestige could be named for it, had been bestowed upon Cayetano S. Arellano, generally recognized as the Filipino of most solid legal attainments and a man respected by all, Spaniards as well as Filipinos. . . . Aguinaldo conferred upon Dr. T. H. Pardo de Tavera the nomination of Director of Diplomacy in the Department of Foreign Affairs. Gregorio Araneta, a prominent young lawyer of Manila, of Bisayan birth, also of the conservative party, was made Secretary of Justice, and Benito Legarda, a wealthy half-caste business man of the capital, was named Director of Agriculture, Commerce, etc. Aguinaldo's military associates, Baldomero Aguinaldo and Mariano Trias, retained respectively the posts of Secretary of War and Secretary of the Treasury, while Felipe Buencamino was for a time head of the Bureau of Public Works. The membership of the Cabinet shifted so often that it was afterward difficult to say just who was who or what. The main thing to note is that the more characteristic conservatives remained but a short time in it. In the background was always Mabini."

[55] Mabini, *La Revolución Filipina,* p. 71; Le Roy, Vol. I, p. 382, n. "President and foreign affairs, Mabini; Interior, Sandiko; Finance, Trias; War, Aguinaldo, (B); *Fomento* (education, public works, agriculture and commerce) Gonzaga." Jaime C. de Veyra and Mariano Ponce, *Efemérides Filipinas,* p. 4.

[56] Mabini, *La Revolución Filipina,* p. 82; Le Roy, Vol. I, pp. 89, 90.

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The cabinet as constituted under the presidency of Mabini met twice a week on set days at Malolos, and at the close of its deliberations forwarded to Aguinaldo a statement of the subjects discussed and the conclusions reached, for his decision. The president of the republic did not preside at, or take part in, its deliberations.[57]

§ 60. Foreign delegates.[58]—The necessity of foreign delegates had early been recognized. Felipe Agoncillo was named as envoy of the Filipino government. On November 23, 1898, a commission was nominated to make known to the civilized world the true character of the country and the capacity of the Filipinos for government,

"On the ninth of last May I ceased to participate in the government of my native land, because the National Assembly had deemed it expedient that others should take my place, in the hope that some compromise might thereby be arrived at which would put an end to the war between the United States and the Philippines in a manner friendly and honorable to both sides." Mabini, A Filipino Appeal to the People of the United States, 170 No. Am. Rev., January, 1900, p. 54. As told by Buencamino, himself: "At the first meeting of Congress in San Isidro, Nueva Ecija, the first day of May, 1899, it was resolved to change the war policy for one of peace with the United States; and this change having been accepted by Don Emilio Aguinaldo, it resulted, as was natural, in a change in the cabinet, Señor Mabini being substituted by Don Pedro Paterno, who, with Don Felipe Buencamino, proclaimed the new policy of conciliation." (Annual Reports of the War Department for the fiscal year ended June 30, 1901, Report of the Lieutenant-General Commanding the Army, Part II, p. 118.) This cabinet was constituted as follows: President, Pedro Paterno; Foreign Affairs, Buencamino; Interior, De las Alas; War (Acting), Flores; Finance (Acting), Ilagan; Instruction, Velarde; Public Works, Maximo Paterno; Agriculture, Industry, and Commerce, Guerrero.

[57] Worcester, The Philippines Past and Present, Vol. I, pp. 266, 267.

[58] See Mabini, A Filipino Appeal to the People of the United States, 170 No. Am. Rev., Jan., 1900, p. 54; Jaime C. de Veyra and Mariano Ponce, *Efemérides Filipinas*, p. 5; Teodoro Kalaw, *Documentos Constituciónales sobre Filipinas*, 2d part, pp. 34, 35; Maximo Kalaw, The Case for the Filipinos, Ch. IV.

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and to ask recognition of the independence of the Philippines. Later on January 26, 1899, a second commission of diplomatic representatives was named. Prominent Filipinos, with residences in Hongkong, Japan, Europe, and the United States, were accordingly designated as such. The principal of the diplomatic representatives were Luna, Ponce, Apacible, Del Pan, Regidor, Lozada, and Agoncillo. The last named was especially active in Paris during the meetings of the peace commissioners and in the United States at the time of public interest in the Philippine question. He was never officially received by the President but was well known to the American public for his unswerving devotion to the interests of his country and to his countrymen for his patriotic self-sacrifices.

The instructions to these delegates were brief. They were to work according to circumstances and much had to be confided to their tact and prudence.

§ 61. The Revolutionary Congress.—In conformity with the organic decree of June 23, made effective by decrees of September 4 and 10, the Revolutionary Congress convened in the church of Barasoain, near Malolos, Bulacan, on September 15, 1898.[59] Eighty-five deputies,[60] among the ablest men of the Archipelago, responded to the summons, although the list printed with the official edition of the political constitution of the Philippine Republic contains the names of ninety-two members, later raised to one hundred and ten.[61] Some members were

[59] Calderón, *Mis Memorias sobre la Revolución Filipina,* Appendix, pp. 1-3.

[60] Worcester, The Philippines Past and Present, Vol. I, p. 264; Foreman, The Philippine Islands, 3d Ed. (1906), p. 469, gives the number at fifty-four.

[61] Le Roy, The Americans in the Philippines, Vol. I, pp. 288, 289, notes.

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elected and some appointed.[62] Naturally the legal profession was most largely represented. While a few delegates were graduates of European Universities, they had little or no knowledge of matters political and constitutional.[63] Nevertheless, F. D. Millet, a well-known journalist writing from personal observation, states that all "were exceptionally alert, keen, and intelligent in appearance." [64] And John Barrett says that they "would compare in behavior, manner, dress and education with the average men of the better classes of other Asiatic nations, possibly including the Japanese. These men, whose sessions I repeatedly attended, conducted themselves with great decorum and showed a knowledge of debate and parliamentary law that would not compare unfavourably with the Japanese Parliament." [65]

The following description of the opening of the Revolutionary Congress at Malolos was written the day after, September 16, 1898, by Mr. Millet, one of the two foreign correspondents present:

"At the large basilica of Barasoain (Malolos) we found a large number of the delegates already assembled, and the guards drawn up to receive the expected cortége of the President and his suites. The bald interior of the church was sparsely relieved by crossed palm-leaves and wreaths fastened to the columns which divide the nave from the aisles, and on the great bare spaces between the windows. In the middle of the nave were two bentwood chairs; on either side and behind these, in the aisles, were seats and benches for spectators. To the left of the chancel a long table, draped with blue and red, was arranged for the

[62] Names given in Calderón, Appendix, pp. 2, 3.

[63] Calderón, pp. 234, 235.

[64] Millet, The Expedition to the Philippines, pp. 261-267.

[65] John Barrett, ex-Minister to Siam, in an address at Shanghai, January 12, 1899; Same author, XX Review of Reviews, "Some Phases of the Philippine Situation," July, 1899, p. 65.

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secretaries, and opposite it were special seats for invited guests, and in the front one next to the chancel rail we were assigned our places. The chancel was hung with a great white drapery, rudely painted to represent ermine, and a broad border of red cloth with palm-leaves and wreaths framed in this curtain. Crossed insurgent flags ornamented the pilasters on each side, and in the middle of the chancel, under the imitation ermine, was a long table draped with light blue and crimson, and behind this three large carved chairs. While we were waiting for the functionaries to arrive, we had an excellent opportunity of studying those who had come from all over the islands to assist in the foundation of a republic—for this was their professed purpose. Every man was dressed in full black costumes of more or less fashionable cut, according to his means or his tastes. . . .

"At last, to the sound of the national march, the delegates moved in a body to the door and then back again, divided, and then Aguinaldo, looking very undersized and very insignificant, came marching down, bearing an ivory stick with gold head and gold cord and tassels. A group of tall, fine-looking generals and one or two dignitaries in black accompanied him, and half surrounded him as they walked along. Mounting the chancel steps, Aguinaldo took the middle seat behind the table, the Acting Secretary of the Interior took the place on his right, and a general occupied the carved chair on his left. Without any formal calling to order, the secretary rose and read the list of delegates, and sat down again. Then Aguinaldo stood up, and after the feeble *vivas* had ceased, took a paper from his pocket, and in a low voice, without gestures and without emphasis, and in the hesitating manner of a schoolboy, read his message in the Tagalo language. Only once was he interrupted by *vivas,* and that was when he alluded to the three great free nations—England,

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France and America—as worthy models for imitation. He next read a purported translation in Spanish with even more difficulty, and when he had finished there was quite a round of cheers, proposed and led by the veteran general Buencamino, for the President, the republic, the victorious army, and for the town of Malolos. Then Aguinaldo arose and declared the meeting adjourned until it should re-assemble prepared to elect officers and to organize in the regular manner. The long-talked-of and ever-memorable function was over." [66]

The Spanish version of the message of the President reads in translation as follows:

"Representatives:—The work of the revolution being happily terminated and the conquest of our territory completed, the moment has arrived to declare that the mission of arms has been brilliantly accomplished by our heroic army and now a truce is declared in order to give place to councils which the country offers to the service of the government in order to assist in the unfolding of its programme of liberty and justice, the divine message written on the standards of the revolutionary party.

"A great and glorious task, an undertaking within the capacity of every class of patriots, is it for undisciplined troops to fight and to break lances in opposition to the injustice done to those whom they defend and protect. But this is not all.

"It remains for us, further, to solve the grave and supereminent problems of peace for those for whom our fatherland demanded from us the sacrifice of our blood and of our fortunes and now at the present time calls for a solemn document, expressive of the high aspirations of the country, accompanied by all the prestige and all the grandeur of the Filipino race, in order to salute with this the majesty of those nations which are united

[66] Millet, *Id.*

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in accomplishing the high results of civilization and progress.

"To these great friendly nations, whose glorious liberty is sung by the muse of history was addressed the sacred invocation which accompanied our undertaking in its incredible acts of valor, to these nations the Filipino people now sends its cordial salutations of lasting alliance.

"At this opening of the temple of the laws, I know how the Filipino people, a people endowed with remarkable good sense, will assemble. Purged of its old faults, forgetting three centuries of oppression, it will open its heart to the noblest aspirations and its soul to the joys of freedom; proud of its own virtues without pity for its own weaknesses, here in the church of Barasoain, once the sanctuary of mystic rites, now the august and stately temple of the dogmas of our independence, here it is assembled in the name of peace, perhaps close at hand, to unite the suffrages of our thinkers and of our politicians, of our warlike defenders of our native soil and of our learned Tagalo psychologists, of our inspired artists and of the eminent personages of the bench, to write with their votes the immortal book of the Filipino constitution as the supreme expression of the national will.

"Illustrious spirits of Rizal, of Lopez Jaena, of Hilario del Pilar! August shades of Burgos, Pelaez and Panganiban! Warlike genuises of Aguinaldo and Tirona, of Natividad and Evangelista! Arise a moment from your unknown graves! See how history has passed by right of heredity from your hands to ours, see how it has been multiplied and increased to an immense size to infinity by the gigantic strength of our arms, and more than by arms, by the eternal, divine suggestion of liberty which burns like a holy flame in the Filipino soul. Neither God nor the fatherland grants us a triumph except on the condition that we share with you the laurels of our hazardous struggle.

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"And you, representatives of popular sovereignty, turn your eyes to the lofty example of the illustrious patriots!

"Let this example and their revered memory, as well as the generous blood spilled on the battlefields, be a potent incentive to arouse in you a noble spirit of emulation to dictate with the great wisdom your high mandate demands, the laws which in this fortunate era of peace are destined to govern the political destinies of our country." [67]

Following the procedure outlined in the decree of June 23, the Congress was organized with Pedro A. Paterno as President, Benito Legarda as Vice President, and Gregorio Araneta and Pablo Ocampo, secretaries.[68] On September 17th Congress listened to an eloquent address [69] by its president, Paterno, and elected its committees.[70]

[67] Millet, *Id.* Also quoted in Spanish in Calderón, *Mis Memorias sobre la Revolución Filipina,* Appendix, pp. 3-5.

[68] Calderón, Appendix, pp. 5, 6.

[69] Quoted by Calderón, Appendix, pp. 6-8.

[70] The committees were constituted as follows:

Committee on congratulations: Messrs. President of the Congress, first-secretary, and representatives Higinio Benitez, Joaquin Gonzalez, Felipe Buencamino, Aguedo Velarde, Felix Bautista, Pablo Tecson, José Albert, Trinidad H. P. de Tavera, Juan Tuason, and Vicente Somosa.

Committee on message: Messrs. Vice-President of the Congress, second-secretary, Antonio Luna, Salvador V. del Rosario, José Infante, Trinidad H. P. de Tavera, Hugo Ilagan, José Baza Enriquez, José Albert, Tomás G. del Rosario, José Lerma, Teodoro Gonzalez, Hipolito Magsalin, Sofio Alandy, Mariano Abella, José Maria de la Viña, José Luna and Alberto Baretto.

Committee on internal regulations: Messrs. Higinio Benitez, Ariston Bautista, Felipe Calderón, Alberto Baretto, Domingo Samson, Felix Ferrer, José Albert, Joaquin Gonzalez, Trinidad H. P. de Tavera, José Maria de la Viña, Teodoro Gonzalez, José Lerma, Salvador V. del Rosario, Antonio Luna, Isidro Paredes, Felipe Buencamino, Arsenio Cruz Herrera, and Ignacio Villamor.

Committee on reception: Messrs. Antonio Luna, Trinidad H. P. de

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The rules of the Spanish Cortes, slightly modified, were temporarily adopted.[71]

Subsequent to organization and ratification of a declaration of independence, the principal work became the discussion and adoption of a constitution. The Congress is also said to have passed other laws. Unfortunately no official record was kept of the proceedings. After the promulgation of the constitution, the outbreak of hos-

Tavera, Tomás G. del Rosario, Felipe Buencamino, Joaquin Gonzalez, and Manuel Xerez.

Committee on appropriations: Messrs. Pablo Tecson, Perfecto Gabriel, Mariano Abella, Aguedo Velarde, Mariano Lopez, Felix Bautista, Ignacio Villamor, Hipolito Magsalin, Mariano V. del Rosario, and Juan Nepomuceno.

Committee on festivities: Messrs. Felipe Buencamino, Tomás G. del Rosario, Telesforo Chuidian, Lorenzo del Rosario, José Baza Enriquez, Juan Nepomuceno, Salvador V. del Rosario, Fernando Canon, José Alejandrino, José Infante, and Isidro Paredes.

Committee on style: Messrs. Trinidad H. P. de Tavera, Felipe Calderón, Joaquin Gonzalez, Leon M. a Guerrero, Miguel Zaragoza, Fernando Canon, Tomás G. del Rosario, Manuel Gomez, Antonio Luna, José M. a de la Viña, Salvador V. del Rosario, and José Albert.

Committee to draft the constitution: Messrs. Hipolito Magsalin, Basilio Teodoro, José Albert, Joaquin Gonzalez, Gregorio Araneta, Pablo Ocampo, Aguedo Velarde, Higinio Benitez, Tomás G. del Rosario, José Alejandrino, Alberto Baretto, José M. a de la Viña, José Luna, Antonio Luna, Mariano Abella, Juan Manday, Felipe Calderón, Arsenio Cruz Herrera and Felipe Buencamino. (Calderón, Appendix, pp. 8-10.)

[71] Calderón says on this point: "After the great celebrations on the 13th (15th) of September in commemoration of the ratification of independence, and after the Congress had been organized, the first thing that had to be done was the framing of the rules, and as nobody knew what rules of Congress were, the late Dr. Joaquin Gonzalez and I were appointed to frame the same. We believed then that it would be more convenient temporarily to adopt the rules of the Spanish Congress with a few modifications, and this was done accordingly." pp. 234, 235. The rules were of one hundred seventy-one articles divided into twenty-two titles. See Kalaw, *Cuestiones Parliamentarias,* Vol. 3, pp. 198-217.

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tilities necessarily neutralized further effective labors by the legislature.

§ 62. The Malolos Constitution,[72] taking its name from the then capital, was the enactment of first importance of the Revolutionary Congress.

Contemporary testimony relative to the Constitution shows that the Committee on the Constitution had before it three plans—those of Paterno, a modification of his previous autonomy project; of Mabini, expounded in his True Decalogue and his Constitutional Program; and of Calderón. The project of the latter prevailed, and was reported to Congress through its author on October 8, 1898.[73] Then, after printed copies had been distributed, there ensued a discussion article by article which lasted for over a month—between October 25 and November 29.[74] Those prominent in the debates were Felipe Calderón, in defense, and Ambrosio Rianzares Bautista, Joaquin Gonzalez, Tomás G. del Rosario, Arcadio del Rosario, Ignacio Villamor, Alberto Barretto, Aguedo Velarde, and Pablo Tecson. The religious question—a state religion as proposed by Calderón, or separation of church and state advocated under the leadership of Tomás G. del Rosario,—was the subject of the most heated debate; after the first vote had resulted in a tie, twenty-five to twenty-five, Pablo Tecson cast the deciding vote in favor of the amendment providing for freedom of wor-

[72] See generally Calderón, *Mis Memorias sobre la Revolución Filipina;* Kalaw, *La Constitución de Malolos;* Kalaw, The Constitutional Plan of the Philippine Revolution, I Philippine Law Journal, Dec., 1914, pp. 204-222; De Veyra and Ponce, *Efemérides Filipinas,* pp. 71-74; Bocobo, Felipe G. Calderón and the Malolos Constitution, The Filipino People, September, 1914; Gullas, The Malolos Constitution, a thesis.

[73] Calderón, Appendix, p. 16. Then follows the report of the Committee (pp. 16-18).

[74] See Calderón, Appendix, pp. 18-98, for a synopsis of the debates.

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ship.[75] The constitution was approved by Congress on November 29[76] and immediately transmitted to Aguinaldo for promulgation. This the President of the Revolutionary government did not do, but, acting on the instigation of Mabini on December 1, 1898,[77] returned the proposed constitution with a message[78] in which he recommended certain amendments. The Congress, following the report of its committee,[79] prepared by Calderón, refused to accede to these amendments. Aguinaldo approved the constitution on December 23d. On January 21, 1899, following formal passage by Congress the day previous, Aguinaldo promulgated the constitution and ordered that it should be "kept, complied with and executed in all its parts because it is the sovereign will of the Filipino people."[80] Due to the war it was never really put in force.

[75] An account, with brief summaries of the discussion, will be found in *La Independencia* for November 29, 30, and December 1, 1898, and in Calderón, pp. 241-245. See Le Roy, The Americans in the Philippines, Vol. I, pp. 316, 317. Article 5, Title III, of the Constitution as passed reads: "The State recognizes the freedom and equality of religious worship, as well as the separation of the Church and the State."

[76] Calderón, Appendix, p. 99.

[77] Calderón, Appendix, p. 99; Ponce, *supra,* pp. 71-74, and Kalaw, *Documentos Constitucionales sobre Filipinas,* Part 2, p. 36, citing document 34, say December 1, 1898. Kalaw, *La Constitución de Malolos,* and Worcester, The Philippines Past and Present, Vol. I, p. 266, citing record 40.8, give January 1, 1899. See Mabini, *La Revolución Filipina,* p. 72.

[78] Quoted in Kalaw, *La Constitución de Malolos,* Appendix B.

[79] Quoted in Kalaw, Appendix C; and in Calderón, pp. 237, 238, Appendix, pp. 99 *et seq.*

[80] See Senate Document 138, 56th Congress, 1st session; and Mariano Ponce, *Efemérides Filipinas,* p. 71. In a letter to General Otis forwarding a copy of the constitution, Aguinaldo said: "My government has promulgated the political constitution of the Philippine Republic, which is to-day enthusiastically proclaimed by the people, because of its conviction that its duty is to interpret faithfully the

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Mabini vigorously contended that the Congress had no right to adopt a constitution. He questioned whether under the provisions of articles fifteen and sixteen of the organic decree giving the powers of Congress, it had such legal right. He advised Aguinaldo that "Congress should not adopt a Constitution, as it was not a Constituent Assembly; nor could it enact laws, as it did not have any legislative powers; and its principal and urgent duty was to study the best system of organizing (the) military forces and obtaining the necessary funds for the maintenance of the same. . . . Moreover, (he added) that it was not the right time for framing a constitution, as the independence of the Philippines had not as yet been recognized. . . . (His) advice was of no avail and was rejected by the Cabinet members." [81] In this, Mabini was probably right in law, but wrong in fact. He was right in showing that the time was not the best for the drafting of a formal constitution. The testimony of

aspirations of that people—a people making superhuman efforts to revindicate their sovereignty and their nationality before the civilized powers.

"To this end, of the governments to-day recognized and observed among cultured nations they have adapted the form of government most compatible with their aspirations, endeavoring to adjust their actions to the dictates of reason and of right, in order to demonstrate their aptitude for civil life.

"And taking the liberty to notify your excellency, I constantly hope that, doing justice to the Philippine people, you will be pleased to inform the Government of your nation that the desire of mine, upon being accorded official recognition, is to contribute to the best of its scanty ability to the establishment of a general peace.

"May God keep your excellency many years.

"EMILIO AGUINALDO."

(Hearings before the Senate Committee on the Philippines, Vol. I, p. 823.)

[81] Mabini's Writings, Vol. II, pp. 246, 247; Mabini, *La Revolución Filipina*, pp. 68-71. See Kalaw, The Constitutional Plan of the Philippine Revolution, I Philippine Law Journal, Dec., 1914, pp. 208, 209.

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other members show him wrong in arguing that the principal aim of the Congress was not the adoption of a constitution. That was the avowed purpose as a matter of policy.[82]

The Constitution so enacted and approved was of course like the American and other modern constitutions, not an entirely new creation. In the Philippines prior constitutional projects had a molding influence.[83] The *Cartilla* and *Sanggunian-Hukuman*—the charter and code of laws and morals of the Katipunan (1896);[84] the provisional constitution of Biaknabato (1897) modelled after a Revolutionary Constitution of Cuba; Mabini's Constitutional Program of the Philippine Republic (1898); the provisional constitution of Mariano Ponce (1898), following Spanish constitutions; and the autonomy projects of Paterno (1898)—all were to evolve into the Malolos Constitution.[85] Besides as the committee on the constitution said in its report: "The work whose results the commission has the honour to present for the consideration of Congress has been largely a matter of selection; in executing it not only has the French constitution been used, but also those of Belgium, Mexico, Brazil, Nicaragua, Costa Rica, and Guatamela, as we have considered those nations as most resembling the Filipino people."[86] Yet the inspiration was always Spanish constitutions and

[82] See Kalaw, *Cuestiones Parliamentarias*, Vol. VI, pp. 4, 15.

[83] Epifanio de los Santos, Biography of Trinidad H. Pardo de Tavera, p. 33.

[84] Epifanio de los Santos, Biography of Emilio Jacinto; Kalaw, The Constitutional Plan of the Philippine Revolution, I Philippine Law Journal, December, 1914, pp. 204-206, quoting portions of the "Cartilla."

[85] See Kalaw, Constitutional Plan of the Philippine Revolution, pp. 206, 207.

[86] Calderón, Appendix, pp. 16-18; Ponce, *Efemérides Filipinas*, pp. 71-74; Worcester, The Philippines Past and Present, Vol. I, p. 265, citing record 40.1.

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institutions or Spanish-American constitutions. A comparison of articles of the Malolos Constitution with those of Spain and the South American Republics will show this.[87] The general outline of the text is borrowed from Costa Rica, Chili, and Spain. Such influence as the Constitution of the United States had upon the Malolos document filtered through the constitutions of its Southern neighbors. Arcadio del Rosario did indeed contend on the floor of the Revolutionary Congress that the work of the committee should have been moulded by the Constitution of the American nation, which, "being the champion of liberty, is the most democratic nation, and with which the Filipino people are united by strong ties of friendship and sympathy," but the reply of Calderón "that the gratitude which the Filipino people owed the American nation did not oblige them to adopt the institutions of the latter, taking into consideration the difference in their history, usages, and customs, and that the country was most akin, politically, to the South American republics, and other Latin nations" prevailed.[88] This tendency to absorb Latin principles was natural, in fact inevitable, because of the members' familiarity with Spanish institutions, with what Calderón called the "religious tradition," and because of the education of the leading members.[89]

There has been wide divergence of opinion as to who wrote the constitution. The names of Mabini[90] and

[87] See Bocobo, Notes, p. 29.

[88] See Calderón, Appendix, pp. 19-23, for a synopsis of the debate.

[89] See Kalaw, The Constitutional Plan of the Philippine Revolution, pp. 211, 212; Le Roy, Vol. I, p. 295.

[90] "It was he (Mabini) who drafted the Constitution of the Philippine Republic," (Foreman, The Philippine Islands, 3d Ed., 1906, pp. 486, 546). The discussion "ended in the adoption of practically the same instrument as Mabini had drawn up" (Le Roy, The Americans in the Philippines, Vol. I, p. 289).

"Senator Shafroth. Did Mabini write that constitution?

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Calderón [91] have been most often mentioned as authors.[92] A reading of Calderón's "Mis Memorias sobre la Revolución Filipina," [93] in connection with the contents of the Paterno plan, the attitude of Mabini, and the studious

"Mr. Quezon. He did in part. That constitution was not written by any single person.

"Senator McLean. How large a portion of it did he write?

"Mr. Quezon. A great deal of it, I understand, as well as Calderón."—Manuel Quezon, Resident Commissioner to the United States, Hearings before the Committee on the Philippines, United States Senate, Sixty-Third Congress, Third Session, p. 479.

"Q. Who wrote that constitution? A. It was voted by the congress.

"Q. But who wrote it? A. A commission.

"Q. Who composed that commission? A. Calderón, Gonzalez, Alberto Barreto, Tomás del Rosario, Pablo Ocampo, and, I believe, I was a member of this commission." (Testimony of Dr. Tavera before the Schurman Commission, Vol. II, p. 392.)

[91] See Bocobo, Felipe G. Calderón and the Malolos Constitution, The Filipino People, September, 1914, p. 5, partly quoted in Vol. 51 Cong. Record, November 2, 1914, pp. 18774-18776; Kalaw, The Constitutional Plan of the Philippine Revolution, I Philippine Law Journal, December, 1914, pp. 204-222.

[92] Also Cayetano Arellano, but without any basis of support. "He (Arellano) prepared the constitution of the republic." Edwin Wildman, Aguinaldo—A Narrative of Filipino Ambitions, p. 364.

[93] Therein Calderón says: "The rules thus framed, having been approved with a few modifications, we proceeded to the appointment of the different committees, and I was appointed with other members, a committee to frame the Constitution. I can perfectly remember how I found out on the first meeting of that committee that every one of us was absolutely a stranger to everything which pertains to political and constitutional law; and from that time on I resolved to share whatever knowledge of political and constitutional law I could gather from the teachings of my country with my companions. Mabini had framed a constitution based upon the Constitution of the Spanish Republic, with slight alterations, but after studying the same, I was convinced that it was not the most proper for our country. On the other hand, Pedro Paterno also gave me a constitution which was identical to the Spanish Constitution of 1868, with very slight and insignificant modifications. This constitution

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habits of Calderón, would leave no doubt that Felipe G. Calderón is entitled to this honor.

A brief synopsis of the constitution[94] is as follows: The preamble reads: "We, the Representatives of the

like that of Mabini did not satisfy me, because both had the same origin, the Spanish Constitution of 1868, so I decided to make another plan which would be eclectic. As I found out that there was a great majority in Congress favoring Paterno, for Mabini was already beginning to lose ground on account of his intransigency, I said that I would present the constitution framed by Pedro Paterno, and I so told Pedro Paterno himself, who, in order to enlighten me on the matter, told me to see Rosauro de Guzman. One night he detained me in his house and made me sleep there to get some help from Ricardo Regidor, whom I learned later to be the real author of the Paterno plan. I was in a somewhat difficult situation, because I had to satisfy my vanity and at the same time display ability in order that I might be able to present a constitution of my own without their noticing that I was entirely ignoring that given to me by Pedro Paterno. Consequently, while I announced publicly that I was only going to make a few modifications of the Paterno plan, I also devoted myself to the study of the constitutions of all countries—a task which I partly knew, because since I finished my law studies I have not practiced my profession, except in 1894, but devoted my time to the study of constitutional law, history and political economy. I outlined my constitution, taking as a model for the organization of the government the constitutions of the South American Republics, more especially that of Costa Rica in respect to the legislative power. On account of the lack of clerks in Barasoain, I had to come to Manila, and one day, I drafted, or rather three clerks, who, if I remember rightly, were D. Mariano Icasiano, D. Hugo Anuario, and another wrote the different points which I had already made for the draft of the constitution in J. Cuadra's drug store, Ermita.

"The draft was approved by the committee with slight modifications, although we found opposition among Mabini's followers who voted for the draft prepared by him." (pp. 234-237.)

[94] Published in Tagalog in the *"Heraldo Filipino,"* official organ of the Revolutionary Government, last installment on February 5, 1899. See Harper's History of the War in the Philippines, p. 106, for facsimile. Appears in English as Appendix C to the Hearings before the Committee on the Philippines, United States Senate, Sixty-Third Congress, Third Session; as Exhibit IV, Vol. 1, Report of the Phil-

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Filipino People, lawfully convened, in order to establish justice, provide for common defense, promote the general welfare and insure the benefits of liberty, imploring the aid of the Sovereign Legislator of the Universe for the attainment of these ends, have voted, decreed, and sanctioned the following:" The constitution then organizes the Filipino State called the Philippine Republic, sovereignty residing exclusively in the people. The national and individual rights of Filipinos and aliens are specified. The Bill of Rights includes freedom from arbitrary arrest and imprisonment; the writ of habeas corpus; sanctity of domicile; prohibition of criminal prosecutions unless by a competent court and according to law; freedom to choose one's domicile; inviolability of correspondence; inviolability of private property and right of possession, reserving to the government the right of eminent domain by reason of public necessity and after proper indemnity; freedom from paying any tax not legally prescribed; freedom of speech and press; freedom of conscience; right to form associations; right to petition; right to establish educational instruction; obligatory and free popular education; the obligation to defend the country and to contribute to the expense of the state; prohibition of titles of nobility from foreign nations without authorization of the government; illegality of entailing property. "The law of the land" is mentioned. For every right there is a corresponding guaranty for its enforcement. The constitution also provides that "the enumeration of the rights granted in this title does not imply the prohibition of any others not expressly stated." A government is established, which is popular, representative, alternative, and responsible, with three powers

ippine Commission, 1900; and in Senate Document 208, Part I, p. 207. See Kalaw, *La Constitución de Malolos,* 1910, containing as an appendix an official copy of the constitution.

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called the Legislative, Executive, and Judicial. The Legislative Power is exercised by the Assembly of Representatives, whose members are to be elected according to law, as representatives of the whole nation, with the right of censure and interpellation. During the time the Assembly is not in session, there is a Permanent Commission. The Executive Power is vested in the President of the Republic, through the Secretaries of the government. The President is elected by the Assembly of Representatives and the special Representatives (as to who these are, the constitution is silent) convened as a Constituent Assembly; the President may initiate laws like the members of the Assembly, and is only responsible in case of high treason. The Secretaries of the government with the President constitute the Council of the government. There are seven portfolios, Foreign Affairs, Interior, Finance, War and Navy, Public Instruction, Public Communications and Works, and Agriculture, Industry and Commerce. The Secretaries are jointly responsible to the Assembly, for the general policy of the government, and individually for their personal acts. The Judicial Power is vested in the Supreme Court of Justice and in the courts organized by the laws. The Chief Justice of the Supreme Court and the Solicitor General are chosen by the National Assembly with the concurrence of the President of the Republic and the Secretaries of the government. The organization of the provincial and municipal assemblies is governed, briefly, by the following principles: (1) The government and direction of the interests of each province or town by their respective corporations; (2) Intervention by the central government, or by the National Assembly, in case they exceed their powers; and (3) Popular and direct elections. Amendments to the constitution originate with the Assembly with power to adopt in the Constituent Assembly. Tran-

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sitory articles to cover the then existing extraordinary situation are appended.[95]

Not to attempt to indite commentaries on a constitution which was never in force, there are certain unique and outstanding features therein which should at least be mentioned. Among these are the unicameral system,[96]

[95] See Kalaw, The Constitutional Plan of the Philippine Revolution, p. 213. A more extended analysis is given by Professor Bocobo in his monograph, Felipe G. Calderón and the Malolos Constitution, the Filipino People, September, 1914, pp. 8, 9, 27, 28; in Gullas, The Malolos Constitution, a thesis; and in Kalaw, *La Constitución de Malolos.*

[96] As to why the unicameral system was preferred, Calderón says: "The reasons which impelled me to do this were purely of local character and may be summed up as follows:

"1. That in the Philippines there does not exist different interests which would have to struggle and be heard in the formation of the laws, like that which is happening in the European monarchies where there is an aristocracy of blood, of wealth, or of intellect, as against the interests of the people, or like that in the United States where the Senate represents the interests of the federation while the House of Representatives represents the interests of each one of the States. In our country, none of these exists, and this is why I did not believe it necessary to form two chambers.

"2. A country in the process of formation like ours had to meet insurmountable obstacles, and if there should be two chambers, the management of our affairs would be retarded somewhat, while by having just a single chamber many obstacles would be overcome.

"3. The lack of personnel, which made me fear that if there should be two chambers, we would not find sufficient persons who could occupy the positions in both chambers." (pp. 240, 241.)

The following have adopted the unicameral system: France (1848); Guatemala (1879); Honduras (1880 and 1894); Santo Domingo (1880); Salvador (1886); Nicaragua (1893); Costa Rica (1871 and its amendments), etc. Kalaw, *La Constitución de Malolos,* p. 22. A constitution of Spain providing for a single chamber had served as a model for South American countries. The Greeks, Romans, and English also had at first only a single law-making body. The previous provisional Philippine Revolutions had provided for but one chamber.

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the establishment of the Permanent Commission,[97] ministerial responsibility, central intervention in local administration,[98] the taking of the properties of the religious orders—and most important of all the dominance of the Legislative Power. Reasons of local character impelled such innovations. If one wished most could be justified on broader grounds. Thus the unicameral system, which is more natural than accidental, has many merits. Excepting intervention and the religious question, the central and all pervading idea was to insure the *predominance of the legislature.* In the words of Calderón:

"While I proclaimed the principle of the separation of powers, I conferred upon the legislature such ample powers in the constitution that in reality it had the power of supervision over the executive and judicial branches; and in order to make this supervision more effective, in imitation of the constitution of Costa Rica, I established what is known as the Permanent Commission, i. e., a committee composed of members of Congress who are to assume all the powers of the same while not in session, with sufficient powers to adopt any urgent measures in case of emergency; in a word, it can be said that the Congress of the republic was the supreme power (*poder omnímodo*) in the whole nation. . . . Having in mind that, should we become independent, we would have for a long time an oligarchical republic in which the military element, which is ignorant as a whole, would pre-

[97] The Permanent Commission also came from South America. The idea of a Permanent Commission was seen in the old Constitutions of Spain of 1812 and 1856, in that of France of 1848, and in some Latin republics like Mexico (1857 as reformed); Guatemala (1879); Chile (1833 as reformed); Perú (1860); Costa Rica (1871 as reformed); etc. Kalaw, *La Constitución de Malolos,* p. 27.

[98] See Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, pp. 31, 32.

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dominate, in order to check this oligarchy, I preferred to neutralize it by an intellectual oligarchy, since the Congress was composed of the most intellectual classes of our country. This is the reason why I conferred upon the legislature such ample powers, not only in the field of legislation but also in the supervision of the executive and judicial branches. In a word, between the two oligarchies, I preferred the intellectual oligarchy of the many to the ignorant oligarchy." [99]

One need not agree with the fulsome eulogy of the framers of the constitution of even so eminent an authority as Senator Hoar that "there are not ten men on the planet who could have made one better," [100] in order to do justice to the Malolos Constitution. It should be remembered in judging its merits and demerits that it was intended to be provisional, was drafted by men inexperienced in grave constitutional problems, and was flung together in a most stressful time. Moreover, many provisions, which to an American observer would seem strange, to the Filipino were natural and fitting. Were a constitution to be drafted to-day by a Filipino constitutional convention, it is most unlikely that you would find a unicameral system included and such undue power given to the legislature. Yet the constitution did conform to many of the tests of a good written constitution. And it did faithfully portray the aspirations and political ideals of the people. As the leading student of its provisions in the conclusion of his work has said: "In spite of the circumstances which then existed, when it seemed as if nothing could stand, when everything was tottering in its foundations, when the very secular institutions and

[99] Calderón, pp. 239, 240. Mabini although of the opposite party reached much the same conclusion in his "Political Trinity."

[100] Quoted in Robinson, The Philippines: The War and the People, p. 52.

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all which with more zeal respected the past was threatened with death and destruction, it was yet possible to frame with serenity and rectitude a Constitution, which was reflexive, rigid, formal, alone in its class, a beautiful and imperishable document which constitutes, according to the Message of Aguinaldo, 'the most glorious token of the noble aspirations of the Philippine Revolution and an irrefutable proof before the civilized world of the culture and capacity of the Filipino people for self government,' a Constitution which established—one is forced to admit —in spite of its being provisional, the first democratic republic in the Orient, for even the Constitution of Japan of the year 1889 can not resist a favorable comparison with the provisional Constitution of Malolos." [101]

§ 63. Governmental activities.—Practically the entire Spanish system of taxation was continued. Personal contributions were received. Bonds were issued. In the annual budget of February 12, 1899, revenues were estimated at over six million pesos.[102]

The government on its part, without neglecting provision for war, organized the most important and urgent

[101] Kalaw, *La Constitución de Malolos,* p. 33.

[102] " . . . *Taylor's Rept.* contains the only important data thus far published regarding the sources of revenue of the Government (see pp. 15-19, 56-101; also the briefs of decrees, 37-51); and these data are very incomplete. They show that the central Government should have received, from May 31, 1898, to September 1, 1899, 2,586,733.48 pesos; but there is discrepancy between this sum and the actual receipts, as recorded in the final ledgers, of some 530,000 pesos, while over 700,000 pesos are not traceable, in the accounts available, to any particular province. . . . Captain Taylor finds that 6 per cent bonds for at least 500,000 pesos were issued, in denominations of 25 and 100 pesos. . . . The annual budget, approved by Aguinaldo, under his war powers, on February 12, 1899, just after the outbreak of war with the United States (see pp. 68-77), shows an approach to systematization of taxes and revenues; these were estimated to be 6,324,729.38 pesos." Le Roy, The Americans in the Philippines, Vol. I, p. 312, note.

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public services. A corps of civil physicians to watch over sanitation was established. A civil register in all the municipalities was created. The chiefs of the municipalities were authorized to act provisionally as notaries in the authentication of documents and extrajudicial acts. There was founded a university to teach law, medicine, and pharmacy, the *Instituto* Burgos for studies of the general high school class, and there was ordered the reopening of all the municipal primary schools. All the provincial councils were directed to proceed to the repair and preservation of roads, bridges, and public buildings. There was created an institute for vaccination to prepare and distribute vaccine to all the provinces. There was established a bureau of census and statistics. There was organized a corps of communications to regulate the sending of correspondence and telegraphic dispatches between the towns and provinces.[103]

Local administration was provided for in the decrees of June 18 and 20, 1898. Municipal and provincial elections were held in accordance therewith. With a few changes in names the system was that already in existence under Spain.[104]

[103] See Special Report of Secretary of War Dickinson, Appendix C.

[104] Le Roy, The Americans in the Philippines, Vol. I, pp. 304, 305. Mr. Worcester, The Philippines Past and Present, Vol. I, pp. 246, 247, citing record 206.3, says on the subject: "In brief, . . . as soon as the territory of the archipelago, or any portion thereof, had passed from the possession of Spanish forces, the people in the towns who were most conspicuous for their intelligence, social position and upright conduct were to meet and elect a town government. The heads of the towns in every province were to elect a head for the province and his three counsellors. The provincial council, composed of these four officials, with the presidente of the capital of the province, were to see to the execution in that province of the decrees of the central government and to advise and suggest.

"This provincial council was to elect representatives for the revolutionary congress, which was to be charged with submitting sugges-

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§ 64. Class of government.—From the standpoint of international law, the Filipino government was of the class known as a *"de facto* government." This was authoritatively held by Mr. Justice Day speaking for the United States Supreme Court in the case of Macleod *v.* United States.[105] Had such a government been established, rebellion and insurrection would have passed into revolution and all its acts from the beginning would have been valid; as it failed, it rested on no legal foundation and those engaged in the uprising were responsible before the law.[106] The political struggle moreover did not attain to such magnitude as justified recognition of belligerency by a foreign power.[107]

§ 65. Character of government.—Various gratuitous epithets have been used to characterize the Revolutionary government,—"a bouffe government;" [108] "a tin-

tions to the central government upon interior and exterior affairs, and was to be heard by the government upon serious matters which admitted of delay and discussion.

"Before any person elected to office was permitted to discharge his functions, his election was to be approved by the central government. The military commanders, except in time of war, were to have no jurisdiction over the civil authorities. They could, however, demand such supplies as they might need, and these could not be refused. The government was to appoint commissioners to carry these regulations into effect."

[105] 229 U. S. 416, 57 L. Ed. 1260 (1912), following Thorington *v.* Smith (1869) 8 Wall. 1, 9, 19 L. Ed. 361, 363. See Endencia *v.* Loalhati (1907) 9 Phil. 177.

[106] See I Moore, International Law Digest, pp. 41-45; Williams *v.* Bruffy (1877) 96 U. S. 176, 185, 24 L. Ed. 716, 717.

[107] I Moore, International Law Digest, § 59; Woolsey, The Legal Aspects of Aguinaldo's Capture, 67 Outlook, April 13, 1901, p. 855; Warner, Barnes & Co. *v.* U. S. (1905) 197 U. S. 419, 49 L. Ed. 816. But see Agoncillo's Memorial to the Senate, of January 30, 1899, contending that the Philippine Republic was entitled to recognition —quoted in Kalaw, The Case for the Filipinos, pp. 64-78.

[108] Williams, The Odyssey of the Philippine Commission, p. 3.

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horn government;" [109] "the paper government of the Filipinos." [110] Most vigorous condemnation comes from the first American Civil Governor—"While we were there the Filipinos had a government under Aguinaldo of five or six months,—perhaps a little longer,—and there never was in the history of those islands, in the palmiest days of Spanish tyranny, such corruption, such tyranny, such a want altogether of a decent government, as there was under Aguinaldo, demonstrating to those who were there that it was absolutely impossible to turn the islands over to that government, or to those people at that time."[111] The effort palpably apparent is to prove by such assertions that since the Revolutionary government was a failure, or in truth constituted no government at all, therefore self-government and independence are absurd and preposterous aspirations.

On the other extreme are those who wildly exaggerate Filipino capacity during this period in order to substantiate present capacity. To them it would seem that the only Republic in Asia, set up by the only Christian people in the East, was crushed—a genuine government of promise extinguished.[111a]

In point of fact the real character of the government established by the Filipinos is obscured by conflicting testimony and by the meagerness of the evidence made public.[112] Yet certain points appear undeniable.

[109] Senator Spooner quoted in Blount, American Occupation of the Philippines, p. 169.

[110] Le Roy, Philippine Life in Town and Country, p. 260.

[111] Taft, A Republican Congress and Administration, and Their Work from 1904 to 1906, printed in Present Day Problems, p. 140.

[111a] See speeches of Senator Hoar and his Autobiography of Seventy Years, Vol. II, pp. 317, 318.

[112] Major Shelton, then Assistant to the Chief of the Bureau of Insular Affairs in an address at the Lake Mohonk Conference in Octo-

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Between the downfall of Spanish authority after the Battle of Manila Bay and the American military occupation in the spring of 1899, there was an interim of about a year. During this period, with the exception of Manila and Cavite and the few towns actually held by the Spanish forces, the Filipino government was in control of almost the entire archipelago. This authority which first extended only over the Island of Luzon, finally reached to the other Islands even to Mindanao. In the careful language of the United States Supreme Court in February, 1899, "a so-called republic . . . administered the affairs" of the Island of Cebú.[118] Direct intervention was possible in Luzon, but in the other Islands, while

ber, 1912, after an examination of the documents on file in the War Department captured from the Filipino forces, gave as his judgment: "The government of Aguinaldo was not complete. It did not have all the forms of government. It did not extend over all, or even over a considerable part, of the archipelago at the same time. It was not republican in any way whatsoever. It was an oligarchy of an extreme type. Control rested in a little group of educated, ambitious, and powerful natives, mostly of mixed blood, surrounding Aguinaldo, guiding him and possibly dominating him, and exercising its authority wherever necessary by force, often employing cruelty, and not hesitating even at the employment of assassination to preserve its power. It is true that representative government was promised, but the promise was never kept. It is true that a congress was assembled, but the selection of its members made the forms of popular government a mockery. It is true that a constitution was finally published —it was never promulgated—but it was published only after General Otis, on January 4th, 1899, issued his proclamation announcing that the government of the United States would be extended over the Islands, and it was apparently published then only to deceive the Americans by establishing in their minds the belief that the Filipino peoples were prepared to govern themselves under forms that Americans loved."

[118]Macleod *v.* United States (1912) 229 U. S. 416, 57 L. Ed. 1260, 1262.

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there was adherence to the central government, yet local administration was practically independent of control.[114]

When one passes on to the next point—the support of the masses of the people, there is absolute contradiction

[114] A vast amount of evidence corroborates the above statements:

A. *Filipino:*

"The said revolution now rules in the provinces of Cavite, Batangas, Mindoro, Tayabas, Laguna, Morong, Bulacan, Bataan, Pampanga, Nueva-Ecija, Tarlac, Pangasinan, Union, Infanta, and Zambales, and it holds besieged the capital of Manila. In these provinces complete order and perfect tranquillity reign, administered by the authorities elected by the provinces in accordance with the organic decrees dated 18th and 23d of June last." Proclamation of Aguinaldo of August 6, 1898, printed in Republic or Empire, Appendix, pp. 742, 743.

"America is in actual possession at this time of one hundred and forty-three square miles of territory, with a population of 300,000, while the Philippine Government is in possession and control of 167,845 square miles, with a population of 9,395,000." Agoncillo, Memorial to the U. S. Senate of January 30, 1899.

"The sudden and general movement destroyed at a stroke the order established by the Spanish administration in the provinces and towns of the Archipelago." Mabini, *La Revolución Filipina,* p. 65.

"The fact that nobody denies is that the authority of that Filipino government extended all over the archipelago, including the island of Mindanao and the Moro country." Manuel L. Quezon, Resident Commissioner to the United States, Hearings before the Committee on the Philippines, United States Senate, Sixty-Third Congress, Third Session, p. 479.

B. *Army and Naval Officers.*

General Merritt states in his report (Vol. I, Part 2, War Department report for 1898) that Aguinaldo had "proclaimed an independent government, republican in form, with himself as President, and at the time of my arrival in the Islands the entire edifice of executive and legislative departments had been accomplished, at least on paper."

General Anderson says: "We held Manila and Cavite. The rest of the island was held not by the Spaniards, but by the Filipinos. On the other islands, the Spaniards were confined to two or three fortified towns." "Our Rule in the Philippines," 170 No. Am. Rev., Feb., 1900, p. 281.

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between Filipino and American authorities. So Mabini said: "We think we have sufficiently proved that the revolution is not the work of a few idealists or ambitious persons, but that it was that of the people themselves, and

"His (Aguinaldo's) success was not in the least astonishing, as after the various islands had driven out the few remaining and discouraged soldiers of their openly declared enemy, they naturally turned to Luzon for some form of central government, the islands of the south being well aware of their inability to maintain successful separate and distinct political establishments. The crude one in process of formation in central Luzon offered itself through its visiting agents and was accepted in part (notwithstanding race animosities and divergent business interests), and very probably because no other alternative was offered. The eight months of opportunity given the ambitious Tagalo by the hold on Spain which the United States maintained was sufficient also for him to send his troops and designing men into the distant provinces and hold the unarmed natives in subjection while he imposed military authority, and thus in December, 1898, we find in Northern and Southeastern Luzon, in Mindoro, Samar, Leyte, Panay, and even on the coast of Mindanao and in some of the smaller islands, the aggressive Tagalo present in person, and, whether civilian or soldier, supreme in authority." Report of General Otis, August 31, 1899, quoted in Harper's History of the War in the Philippines, pp. 99, 100.

"It cannot be denied that, in a region occupied by many millions of inhabitants, for nearly six months it (the revolutionary government) stood alone between anarchy and order. The military forces of the United States held control only in Manila, with its environs, and in Cavite, and had no authority to proceed further; while in the vast remaining districts the representatives of the only recognized power on the field were prisoners in the hands of their despised subjects. It was the opinion at Manila during this anomalous period in our Philippine relations, and possibly in the United States as well, that such a state of affairs must breed something akin to anarchy. I can state unreservedly, however, that Mr. Wilcox and I found the existing conditions to be much at variance with this opinion. During our absence from Manila we travelled more than 600 miles in a very comprehensive circuit through the northern part of the island of Luzon, traversing a characteristic and important district. In this very way we visited provinces, of which some were under the immediate control of the central government at Malolos, while others

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also that the people do not sustain it unconsciously and instigated only by a few individuals, but that they know full well and since long years back what they are fight-

were remotely situated, separated from each other and from the seat of government by natural division of land, and accessible only by lengthy and ardous travel. As a tribute to the efficiency of Aguinaldo's government and to the law-abiding character of his subjects I offer the fact that Mr. Wilcox and I pursued our journey throughout in perfect security, and returned to Manila with only the most pleasant recollections of the quiet and orderly life which we found the natives to be leading under the new régime." L. R. Sargent, 63 Outlook, September 2, and 23, 1899, pp. 17, 202, quoted in Senate Document 66, 56th Congress, 1st Session. (W. B. Wilcox and L. R. Sargent, two American naval officers, made an extended trip through Northern Luzon, in the autumn of 1898.)

C. *Various.*

"It is little short of marvellous how rapidly the insurrection has gained ground in this short time, and how extensive and successful the operations of the army have been. The insurgents managed in a very few weeks to besiege and capture numerous small Spanish positions in the provinces, and they completely overran the whole island of Luzon, together with seven adjacent islands." F. D. Millet, The Filipino Republic, September 16, 1898, printed in Harper's History of the War in the Philippines, pp. 65, 66.

"By December, 1898, the revolutionary government was in control of almost the entire archipelago." McKinley, Island Possessions of the United States, p. 234.

"He (Aguinaldo) has organized a government which has practically been administering the affairs of that great island (Luzon) since the American occupation of Manila." John Barrett in an address at Shanghai, January 12, 1899.

"The revolutionary government was universally recognized throughout the Islands, except in Manila and seaports still held by the Spanish." Edwin Wildman, Aguinaldo—A Narrative of Filipino Ambitions, p. 142.

"Under the treaty of peace, signed in Paris, the Americans became nominal owners of the evacuated territories, but they were only in real possession, by force of arms, of Cavite and Manila. The rest of the Archipelago, excepting Mindanao and the Sulu Sultanate, was virtually and forcibly held by the natives in revolt." Foreman, The Philippine Islands (3d Ed., 1906), p. 478.

Albert G. Robinson, the Philippines correspondent for the New

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ing for, and by what aspirations they are impelled to it. The very sorrow and indignation they felt over the abuses and questionable acts of some of the insurgent leaders go

York Evening Post, during portions of 1899 and 1900, expresses the opinion that "the Philippine Islands, with the exception of the besieged city of Manila, were virtually in the hands of the Filipinos."

And again to the same effect that "it is now known that at the time of the arrival of the American army in Manila in June, 1898, almost the entire area of the Philippines, practically all with the exception of one or two of the larger coast cities, was in the hands of the insurgents. Not only were they in control of the country; they were administering its political affairs as well. This they continued to do for the greater part of the island throughout the following year, practically until the autumn of 1899. Up to that time the territory occupied by the forces of the United States in the island of Luzon was confined to a very limited area in the vicinity of Manila, with a filamentary extension northward for some fifty or sixty miles along the Manila-Dagupan railway. Very much the same condition obtained on the other islands. One thing is certain: although greatly disturbed by the conditions of war, this territory was under some form of governmental administration."

Finally quoting a letter of his, dated September 27, 1899, to the New York Evening Post he states:

"There is one point which I think is not generally known to the American people, but which is a very strong factor in the question of Filipino self-government, both now and in any future position. In the West Indies the greater number of offices and official positions were filled by Spaniards, either native-born or from the Peninsula. In the Philippines the percentage of available Spaniards for minor positions was vastly less than that shown in the West Indian colonies. The result was that while the more prominent and more profitable offices in the Philippines were filled by Spaniards, many of the minor offices in the larger cities and most of those in the country were held by Filipinos. Therefore, when the Filipino party assumed the government for those districts which the Spaniards evacuated, the Filipinos had a system of government in which Filipinos held most of the positions, already established for their purposes. It was but necessary to change its head and its name. Instead of being dominated by the agents of Alfonso XIII, *por la gracia de Dios y de la Constitución Rey católico de España,* the same machinery was set in motion and controlled first by the dictatorial government and then by the Philippine revolutionary government, under the constitution

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to prove our statement." [115] So President Schurman said: "The Tagalog insurgents and their Philippine Republic did not represent the inhabitants of the Philippine Islands, but only a minority of them." [116] An impartial view, tak-

proclaimed on June 23, 1898. This fact simplified matters for the Filipinos and gave them the ground upon which they make their assertion of maintaining a successful administration in those provinces which they occupied." Robinson, The Philippines: The War and the People, pp. 48, 282, 403, 404.

[115] Quoted in Harper's History of the War in the Philippines, January 11, 1900, p. 28. "They tell you that the government of the Philippine Republic had never been recognized by the whole country. This is a manifest falsehood, because it had been recognized even by the Mohammedans in the South, whom the Imperialists, their friends and allies, boast so much of having reduced to submission; and by the mountain races of Luzon, who always refused to recognize the Spanish Government and who will do the same to the American Government. The Filipino Government is the only one which can conciliate and redeem them, for in that government only have they confidence—a success for civilization which Imperialism could never accomplish." G. Apacible, June, 1900, in an address "To the American People," pp. 11, 12; Apacible, 63 Outlook, Dec. 2, 1899, p. 835.

"The authority of the revolutionary government was extended in a few months to all the islands composing the archipelago by express recognition of their inhabitants. It was questioned in no part of Luzon, the Visayas, or of Mindanao after the people were delivered from the Spaniards. The chiefs of the various non-Christian tribes of the north of Luzon who never submitted to Spanish domination sent messages acknowledging the government then established. Prominent Mohammedan chiefs of the island of Mindanao gave their spontaneous and sincere adhesion." Letter of the Nacionalista Party, September 1, 1910, Appendix C, Special Report of Secretary of War Dickinson.

[116] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, pp. 7, 20. Mr. Albert G. Robinson, in a letter to his paper, the New York Evening Post, on December 18, 1899, said: "It was duly recognized and supported, heartily and willingly, by many thousands. Others accorded but a half-hearted recognition, some objected to it and many were

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ing into consideration the large number of Filipinos under arms, the local governments giving allegiance, the difficulties encountered by American officials, and prior conditions in remote regions, leads to the conclusion that in the Northern provinces, the Moro country, and in isolated spots as in Negros there was manifest indifference to the cause, but that in all the rest of the Archipelago, the Filipino govrnment had the earnest support of the people.

Aside from these two points there is to the credit of the Revolutionary government that while oligarchy and dictatorship were military necessities, all possible steps leading to civil government were taken. Admirable was the constitution then drafted. Statesmanlike were the proclamations issued. "If they were found in our own history of our own revolutionary time we should be proud to have them stand by the side of those great state papers which Chatham declared were equal to the masterpieces of antiquity." [117]

After all, any attempt to draw dogmatic deductions from the history of the Revolutionary government which will assist in settling the Philippine question would be foolish. Born of a revolution, it lived in the atmosphere of a revolution. Time for calm reflection and deliberate action could not be taken. The services of a number of the most distinguished leaders were lacking. Except as showing a love for constitutional liberty and a desire for independent existence, neither gross incapacity nor great capacity for governmental administration was proved.

indifferent." Robinson, The Philippines: The War and the People, pp. 115, 116.

[117] Senator Hoar, quoted in Sawyer, The Inhabitants of the Philippines, pp. 119, 120. *Disposiciones del Gobierno Revolucionario de Filipinas.* English versions of these documents are in part to be found in Sen. Doc. 62, pp. 431-39; Sen. Doc. 208, 56th Cong., 1st Sess., part 1, pp. 88-101, and part 3, p. 2; Bureau of Navigation, pp. 104-05, 111-19, and in various other books and documents. In the War Department are filed some 60,000 documents of this period.

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CHAPTER 5.

GOVERNMENTAL STEPS[1] UNDER THE AMERICAN ADMINISTRATION.

First Step—Acquisition.

§ 66. The treaty of Paris.
67. Reasons for retention.
68. Title to the Philippines.

Second Step—Presidential Government Instituted.

69. Military rule.

Third Step—Investigation and Conciliation.

70. The first Philippine commission.

Fourth Step—Filipino Co-operation.

71. The federal party.

Fifth Step—Quasi-Civil Government Begun.

72. The second Philippine commission.

Sixth Step—Change from Presidential (Military) to Congressional (Civil) Government.

73. The Spooner amendment.

Seventh Step—Civil Government Established.

74. Civil governor inaugurated.
75. Civil organization completed.

Eighth Step—Extension of Popular Self-Government.

76. Filipino participation.

Ninth Step—Autonomy.

77. The Jones bill.

[1] "Steps." This word has been used designedly. It epitomizes American Philippine policy. It is remarkable also the number of times that it can be found in the writings of those in authority. See § 76 *infra,* note.

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Tenth and Last Step—Philippine Independence.

78. The so-called Philippine problem.

Résumé.

79. American Philippine policy.
80. Outline of present administration.

First Step—Acquisition.

§ 66. The Treaty of Paris.[2]—A protocol of peace[3] between the United States and Spain was signed on August 12, 1898 (August 13, 5:30 A. M., Manila time), or a few hours before the capture of the city of Manila. One of its terms authorized the United States to "occupy

[2] See generally S. Doc. No. 62, 55th Congress, 3d Session; S. Doc. No. 148, 56th Congress, 2nd Session; Foreign Relations, 1898, 1899; Spanish Diplomatic Correspondence and Documents, 1896-1900, Presented to the Cortes by the Minister of State; I Moore, International Law Digest, pp. 521-532; Le Roy, The Americans in the Philippines, Vol. I, Ch. IX; Rear-Admiral Chadwick, The Relations of the United States and Spain, Vol. II, Chs. XX, XXI; Lodge, The War with Spain, Ch. XI; John W. Foster, American Diplomacy in the Orient, Ch. XIII; José Gil, The Treaty of Paris, unpublished thesis.

[3] Insofar as the preliminary peace negotiations concerned the Philippines, they were as follows:

On July 18, a telegram was sent to M. Cambon, the French Ambassador at Washington, that Spain would be disposed to accept any solution that would conduce to the pacification of Cuba. This was immediately followed by another, "very confidential," in explanation of the former. It said: ". . . I will feel much obliged to your excellency if on this point you investigate the dispositions of Mr. McKinley regarding Puerto Rico and the Philippines." A Spanish message of July 22 was answered by the secretary of state, on July 30. The reply expressed the satisfaction of the president in receiving the Spanish proposal and stated the United States would require ". . . Third . . . the United States is entitled to occupy and will hold, the city, bay, and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines. . . ." The French Ambassador telegraphed on July 31 the conversation that he had the day before with the President, who had invited him "to make any observations

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and hold the city, bay, and harbor of Manila, pending the conclusion of a Treaty of Peace which shall determine the control, disposition and government of the Philippines."

which the demands formulated by the United States might suggest." After mentioning Spain's fear of the danger to Cuba of premature independence and Spain's willingness to leave the question of Cuba entirely in the hands of the United States, he said:

". . . *A fortiori,* I added, the demands formulated in article III, are for the purpose of compromising in Madrid the success of this preliminary negotiation—above all if between the words *control* and *government* of the Philippines is maintained the word *possession* which appears to place in doubt from now on the sovereignty of Spain over this colony. 'You will observe,' the president of the republic then remarked to me, 'that my demands set forth in the first two articles do not admit of discussion; I leave to negotiations the task of resolving the question of the Philippines. If the American forces have remained until now in their positions, it is in obedience to a duty with respect to residents and strangers and the progress of affairs impose upon me.' Seeing the president of the republic resolved not to modify the terms of article III, I made such a pressing appeal to his generosity that he seemed affected, and in spite of the opposition of the secretary of state, Mr. Day, ordered the word *possession* replaced by the word *disposition,* which does not prejudice the result of the negotiations and does not have the same general acceptation. . . ."

In a telegram of August 1, Spain "set forth some observations" which, however, were sent only in the way of suggestion, full discretion being left to the French Ambassador. The despatch said: ". . . The third point, which determines the form of disposition of the Philippine Islands, seems lacking in precision to this government. The government has supplied the deficiencies noticed in it, supposing that there is no question respecting the permanent sovereignty of Spain in that archipelago, and that the temporary occupation of Manila, its port, and bay by the Federal government is to continue only for the time necessary for an understanding between both countries regarding administration reforms; also that it will be well understood that all discussions regarding such reforms shall be exclusively between Spain and the United States." (Spanish Diplom. Corres. and Docs., 214.) The result, given in a telegram from M.

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The two peace commissions assembled at Paris the latter part of September, 1898. The American Commission was composed of William R. Day, ex-Secretary of State resigned to become President of the Commission;

Cambon on August 4, was inflexibility on the part of the President. M. Cambon said:

". . . As far as could be seen Mr. McKinley showed himself inflexible, and reiterated that the question of the Philippines was the only one which was not definitely resolved in his mind. I improved this opportunity to ask the president to have the kindness, as far as possible, to define his intentions regarding the Philippines. On this point, I said, the answer of the Federal government is drawn in terms which may aid any claims on the part of the United States, and in consequence may arouse the fears of Spain regarding her sovereignty. Mr. McKinley replied to me: 'I do not desire to leave any ambiguity on this point. The negotiators of the two countries will be the ones to decide what will be the permanent advantages that we shall demand in the archipelago, and finally the control (*controle*), disposition, and government of the Philippines.'" On August 7 the Spanish Minister of State telegraphed through the French Ambassador the following message to the American Secretary of State: ". . . The terms relating to the Philippines seem, to our understanding, to be quite indefinite. On the one hand, the ground on which the United States believe themselves entitled to occupy the bay, the harbor, and the city of Manila, pending the conclusion of a treaty of peace, cannot be that of conquest, since in spite of the blockade maintained on sea by the American fleet, in spite of the siege established on land by a native supported and provided for by the American admiral, Manila still holds its own, and the Spanish standard still waves over the city. On the other hand, the whole archipelago of the Philippines is in the power and under the sovereignty of Spain. Therefore the government of Spain thinks that the temporary occupation of Manila should constitute a guaranty. It is stated that the treaty of peace shall determine the control, disposition, and government of the Philippines; but as the intentions of the Federal government by regression remain veiled, therefore the Spanish government must declare that, while accepting the third condition, they do not *a priori* renounce the sovereignty of Spain over the archipelago, leaving it to the negotiators to agree as to such reforms which the condition of these possessions and the level of culture of their natives may render desirable. The government of her majesty accepts the third condition, with the

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Senators Cushman K. Davis, William P. Frye, and George Gray; and Mr. Whitelaw Reed, former Minister to France. The Spanish Commissioners were Eugenio Montero Rios, President of the Senate, President; Sen-

above mentioned declarations. . . ." Mr. Day sent a note to M. Cambon, saying: "The Duke's note, doubtless owing to the various transformations which it has undergone in the course of its circuitous transmission by telegraph and in cipher, is not, in the form in which it has reached the hands of the president, entirely explicit. Under these circumstances it is thought that the most direct and certain way of avoiding a misunderstanding is to embody in a protocol, to be signed by us as the representatives respectively of the United States and Spain, the terms on which the negotiations for peace are to be undertaken," and enclosed a draft which, besides arranging for the appointment of commissioners for the evacuation of the Spanish islands in the West Indies and for the appointment of commissioners to treat of peace, "embodied the precise terms tendered to Spain" in the note of July 30. They were as follows: ". . . Article 3. The United States will occupy and hold the city, bay, and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition, and government of the Philippines. . . ." Two days later the protocol was signed and hostilities ordered suspended. The Washington date was Friday, August 12; the hour 4:30 P. M. It was 5:30 A. M., Saturday, August 13, at Manila, and the American forces had just begun to take position for their move against the city. There was no loss of time in telegraphing the fact that hostilities were suspended. Manila, however, was the one point of operations which could not be quickly reached, and meanwhile the city was to be in actual occupancy by American troops. The news of the suspension did not reach there until the afternoon of August 16 (Manila date).

More serious was the attitude taken first in a note of September 11, through the French Ambassador, regarding the Philippines, which claimed that the occupation of Manila and its harbor and bay should be considered in the light of the protocol of August 12, and not in virtue of the capitulation of August 14; that the occupation did not confer the right to alter Spanish laws in force there but that the civil administrative, judicial, and political institutions should be maintained until the final treaty of peace should determine the "control, disposition, and government" of the islands, Spain not having renounced her sovereignty there; that Spain considered the troops of

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ator Buenaventura Abarzuza; Associate Justice José de Garnica y Diaz; Wenceslaw Ramirez de Villa-Urrutia, Minister Plenipotentiary to the Belgian Court; and General Rafael Cerero y Saenz.

the Manila garrison as free and proposed to use them in other parts of the archipelago to suppress rebellion and maintain order. The paper also included a request that the United States demand of the Tagal rebels the surrender of Spanish prisoners held by them; and a declaration that it was Spain's intention to treat any armed vessels fitted out by the insurgents as pirates. The despatch ended by asking that the families of the officers be taken from the Marianne islands, and who were stated to be in deplorable circumstances, be brought to Cavite or returned to Spain. (Foreign Relations, 1898, 813.) The American note of September 5 had said: "It can scarcely be expected that this government would even consider the question of adopting the first alternative, in view of the fact that for sometime before the surrender of Manila the Spanish forces in that city were besieged by the insurgents by land while the port was blockaded by the forces of the United States by sea. As to the second alternative, it will be a matter for regret if it should be adopted on the strength of rumors, some of which have been shown to be groundless, while others yet are unconfirmed. The government of the United States will, through its military and naval commanders in the Philippines, exert its influence for the purpose of restraining insurgent hostilities pending the suspension of hostilities between the United States and Spain. It would be unfortunate if any act should be done by either government which might, in certain aspects, be inconsistent with the suspension of hostilities between the two nations, and which might necessitate the adoption of corresponding measures of precaution by the other government." (Foreign Relations, 1898, 811.) The shorter statement of the conditions given in reply to the notes of the American department of state should be given:

". . . The Minister of State at Madrid, to whom the replies made by your honorable predecessor in his notes of September 5, 6, and 16 were communicated, has just requested me to lay the following observations before you: . . .

"2. In opposition to this theory the Spanish government maintains that according to the terms of article VI of the protocol any act of hostility committed subsequently to the signing of that instrument is morally without legal value. If the belligerent forces could not be at once notified of the agreement made, this was merely due to a ma-

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The most difficult question and the one on which the negotiations turned, concerned the disposition of the Philippines. It was taken up October 31 and proposals and counter proposals occupied most of the time of the Commissioners during the next month. This situation arose first from the lack of decision upon the part of the President and the consequent ambiguity of the Commissioners' instructions; it was complicated by the conflicting advice which came to the American Commission; it was increased by the doubtful status in international law of

terial impossibility, owing to the cutting by the Federal authorities of the cable whereby telegraphic communication was maintained between Manila and Asia. Under these circumstances the Spanish government persists in its conviction that the capitulation of August 14 is null and void, and will consider it useless to make any reference thereto until certain acts of the American authorities at Manila shall come to its knowledge. . . ." This was answered by Mr. Hay, who had now replaced Mr. Day, the head of the American Commission to Paris, as Secretary of State, as follows:

"October 29, 1898.

"Sir: I had the honor duly to receive the note which you addressed to me on the 4th instant, in which, at the request of the minister of State of Spain, you lay before me certain observations of the Spanish government made in reply to this department's notes to Mr. Cambon of the 5th, 8th, and 16th ultimo.

"Among these observations are included several subjects which are now under discussion by the peace commission at Paris, and for that reason the government of the United States does not think it convenient to discuss them here.

"I deem it proper, however, to say:

"1. That the government of the United States is not able to accept the interpretation placed by the government of Spain upon the respective effects in law and in fact of the protocol of August 12 and the capitulation of August 14 upon the military situation at Manila. . . ." F. E. Chadwick, The Relations of the United States and Spain, Vol. II, pp. 431-449. See further 30 Stats. at L., 1742; Spanish Diplomatic Correspondence and Documents, pp. 200, 206, 214; Foreign Relations, 1898, pp. 813, 819, *et seq.*; I Moore, International Law Digest, pp. 520-527; John Holladay Latané, America as a World Power, 1897-1907, pp. 65-67.

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American tenure of Manila under the surrender made after the signing of the peace protocol; and it was augmented further by the radical differences of opinion which appeared among the American commissioners.[4] To obtain light on a dark subject, witnesses such as General Merritt, with statements from others also, and John Foreman, the writer, were called. Felipe Agoncillo, the accredited agent of the Revolutionary government of the Philippines, was refused recognition,[5] notwithstanding his intimation that his people would accept no settlement to which they were not a party.

[4] McKinley, Island Possessions of the United States, p. 56.

[5] "My old acquaintance Felipe Agoncillo was sent to Washington in September by Emilio Aguinaldo to solicit permission from the American Government to represent the rebel's cause on the Paris Commission, or, failing this, to be allowed to state their case. The government, however, refused to recognize him officially, so he proceeded to Paris. Having unsuccessfully endeavored to be heard before the Commission, he drew up a protest in duplicate, handing a copy to the Spanish and another to the American Commissioners. The purport of this document was that whereas the Americans had supplied the Filipinos with war-material and arms to gain their independence and not to fight against Spain in the interests of America, and whereas America now insisted on claiming possession of the Archipelago, he protested, in the name of Emilio Aguinaldo, against what he considered a defraudment of his just rights. His mission led to nothing, so he returned to Washington to watch events for Aguinaldo. After the treaty was signed in Paris he was received at the White House, where an opportunity was afforded him of stating the Filipinos' views; but he did not take full advantage of it, and returned to Paris, where I met him in July, 1900, holding the position of 'High Commissioner for the Philippine Republic.' His policy was, then, 'absolute independence, free of all foreign control.'" John Foreman, The Philippine Islands, 3rd Ed. (1906), pp. 472, 473; Hubert Howe Bancroft, The New Pacific, p. 76. "The moral right of the Filipinos to have a voice in the making of any programme affecting their future must at once be conceded by every American (except such as think government by the 'consent of the governed' is only for white men.)" Le Roy, The Americans in the Philippines, Vol. I, pp. 378, 379.

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The instructions of the President to the Commission insofar as they concerned the Philippines, first presented certain guiding principles. These emphasized that "We took up arms only in obedience to the dictates of humanity and in the fulfillment of high public and moral obligations. We had no design of aggrandizement and no ambition of conquest." This was altruism. Again "Avowing unreservedly the purpose which has animated all our effort, and still solicitous to adhere to it, we cannot be unmindful that without any desire or design on our part, the war has brought us new duties and responsibilities which we must meet and discharge as becomes a great nation on whose growth and career from the beginning the Ruler of Nations has plainly written the high command and pledge of civilization." This was patriotism. But again "Incidental to our tenure in the Philippines is the commercial opportunity to which American statesmanship can not be indifferent. It is just to use every legitimate means for the enlargement of American trade; but we seek no advantages in the Orient which are not common to all." This was commercialism. Thereupon the President concluded:

"In view of what has been stated, *the United States cannot accept less than the cession in full right and sovereignty of the Island of Luzon.* It is desirable, however, that the United States shall acquire the right of entry for vessels and merchandise belonging to citizens of the United States into such ports of the Philippines as are not ceded to the United States upon terms of equal favor with Spanish ships and merchandise, both in relation to port and customs charges and rates of trade and commerce, together with other rights of protection and trade accorded to citizens of one country within the territory of another. You are therefore instructed to demand such concession, agreeing on your part that Spain shall have similar rights as to her subjects and vessels in the

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ports of any territory in the Philippines ceded to the United States." [6]

Differences of opinion soon developed among the American Commissioners. Messrs. Davis, Frye, and Reed favored demanding the whole Philippine Archipelago. Mr. Gray could not "agree that it is wise to take the Philippines in whole or in part." Mr. Day advocated a middle course, retention of Luzon and certain other islands. In response to these requests for further instructions, the Secretary of State replied on October 26 that—

"The information which has come to the President since your departure convinces him that the acceptance of the cession of Luzon alone, leaving the rest of the islands subject to Spanish rule, or to be the subject of future contention, cannot be justified on *political, commercial,* or *humanitarian* grounds. *The cession must be of the whole Archipelago or none.* The latter is wholly inadmissible, and the former must therefore be required. The President reaches this conclusion after most thorough consideration of the whole subject, and is deeply sensible of the grave responsibilities it will impose, believing that this course will entail less trouble than any other, and besides will best subserve the interests of the people involved, for whose welfare we cannot escape responsibility." [7]

Following presentation of this demand, there ensued an elaborate discussion.[8] Spain tenaciously maintained that the peace protocol only contemplated a temporary occupation of Manila and did not impair Spanish sovereignty. To this the United States replied that the protocol left to the determination of the treaty of peace the entire subject of the future government and sovereignty

[6] I Moore, International Law Digest, pp. 527, 528.

[7] I Moore, International Law Digest, p. 528; Foreign Relations, 1898, p. 935.

[8] See Senate Document 62, 55 Cong. 3 Sess., pp. 110-196.

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of the Philippines. A basis of agreement was finally suggested, taking definite shape in the instruction of November 13 to the American Commission *"to insist upon the cession of the whole of the Philippines, and, if necessary, pay to Spain ten to twenty millions of dollars. . . .* The President can not believe any division of the Archipelago can bring us anything but embarrassment in the future." [9] On November 21, 1898, the American Commissioners presented an ultimatum, in which they demanded the cession of the entire Philippine Archipelago, while on the other hand they offered to pay Spain $20,000,000, to admit Spanish ships and merchandise into the ports of the islands for a stated period on the same terms as American ships and merchandise, and to insert in the treaty of peace a mutual relinquishment of claims.[10] One week later the Spanish Commission accepted the terms offered, ending with these words: "The Government of Her Majesty, moved by lofty reasons of patriotism and humanity, will not assume the responsibility of again bringing upon Spain all the horrors of war. In order to avoid them, it resigns itself to the painful strait of submitting to the law of the victor, however harsh it may be, and as Spain lacks material means to defend the rights she believes are hers, having recorded them, she accepts the only terms the United States offers her for the concluding of the treaty of peace." [11] After five more sessions devoted to perfecting the details of the treaty, it was finally signed by the plenipotentiaries on December 10, 1898.

The President transmitted the treaty to the Senate on

[9] Mr. Hay, Sec. of State, to Mr. Day, President of the United States Peace Commission, tel., Nov. 13, 1898, S. Doc. 148, 56 Cong., 2 Sess. 48, I Moore, p. 529.

[10] S. Doc. 62, 55 Cong., 3d Sess., Part 2, p. 210.

[11] Le Roy, The Americans in the Philippines, Vol. I, p. 373; S. Doc. No. 62, 55th Cong., 3d Sess., Part 2, p. 213.

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January 4, 1899, together with the protocols and accompanying papers.[12] The ensuing debate attracted the close attention of the entire country. From the side of the opposition it proceeded on three lines—lack of constitutional power to acquire and hold the Philippines, the violation of the principles of the Declaration of Independence involved in doing so, and sympathy and admiration for the Filipinos.[13] A number of amendments proposed by Senator Vest requiring Spain merely to "relinquish," not to "cede," her sovereignty over the Philippines, and making a part of the treaty itself the declaration that the United States assumes control "for the time being" and "as far as such control may be needful" for the purpose of enabling the people of the Archipelago to establish a government "suitable to their condition," and of assuring the rights of life and property and the maintenance of order, were voted down.[14] On February 6, 1899, the United States Senate ratified the treaty by a vote of fifty-seven to twenty-seven; a change of two votes would have

[12] Senate Docs. 62, 55 Cong., 3d Sess., pts. i-iii.

[13] Lodge (then a member of the Senate), The War with Spain, p. 231.

[14] Such proposals were cleverly answered by Senator Lodge in the following words:

"We must either ratify the treaty or reject it, for I cannot suppose that anyone would seriously advance the proposition that we should amend the treaty in such a way as to make pledges to Spain, and to Spain alone, for our good conduct in a matter which will be wholly our own to decide. . . . I believe we can be trusted as a people to deal honestly and justly with the Islands and their inhabitants thus given to our care. I believe that we shall have the courage not to depart from those Islands fearfully, timidly, and unworthily and leave them to anarchy among themselves, to the brief and bloody domination of some self-constituted dictator, and to the quick conquest of other powers, who will have no hesitation as we should feel in crushing them into subjection by harsh and repressive methods. It is for us to decide the destiny of the Philippines, not for Europe, and we can do it alone and without assistance."

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defeated the treaty.[15] Two factors which had a great deal to do with the approval of the treaty were the support of Mr. Bryan and the beginning of the Philippine Revolution. Congress appropriated the money [16] to carry out its obligations on March 2.

The same narrow margin secured ratification by the Spanish Cortes on March 19. An amendment aimed at preservation of Spanish sovereignty in the Philippines was only defeated by a vote of 120 to 118.[17]

The ratifications were exchanged by the two countries on the 11th of April, 1899. The same day the treaty was publicly proclaimed by the President of the United States. A supplemental treaty to correct the boundaries of the Philippines as defined in Article III of the Treaty of Paris so as to include the Islands of Sibutu and Cagayan Sulu was signed on November 7, 1900, and ratifications exchanged on March 23, 1901. The United States paid Spain $100,000 for her claims to these islands.[18]

The Treaty of Paris [19] is made up of seventeen articles. Article III. stipulated that "Spain cedes to the United States the Archipelago known as the Philippine Islands." The following paragraph of the same article then reads: "The United States will pay to Spain the sum of twenty million dollars, within three months after the exchange of the ratifications of the present treaty." While this money payment must necessarily have had some connec-

[15] For summary of votes, see Senate Document 182, 57th Cong., 1st Sess.

[16] 30 Stats. at L. 993.

[17] Le Roy, The Americans in the Philippines, Vol. II, p. 12.

[18] See 31 Stats. at L., 1942; I Moore, International Law Digest, pp. 530, 531, note b. "These worthless islands are of no importance whatever except that through an oversight they cost the United States government one hundred thousand gold dollars." A. Henry Savage Landor, The Gems of the East, p. 233.

[19] 30 Stats. at L., 1754.

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tion with the Philippine question, its exact purpose cannot be ascertained from the language of the treaty. Whether the twenty million dollars was intended as a purchase price for the Philippines [20] or was a reimbursement to Spain for the surrender of what was assumed to be an equivalent value in public property owned by that power in the Philippines, together with the improvements of a pacific character,[21] is really not important; the fundamental object was to arrive at such a compromise as would avoid a renewal of the war, and yet not permit Spain to retain the Philippines. Then follows Article IV. granting equal rights to Spanish merchandise and ships for a period of ten years. Articles V. and VI. gave the terms of evacuation and provided for the release of prisoners of war. Article VIII. stipulated for the relinquishment of all property and records belonging to the Crown of Spain; it further recognized the legal personality of the

[20] Even the highest judicial tribunal is hazy in its views for it states that "The Philippines, like Porto Rico, became, by virtue of the treaty, ceded conquered treaty, *or* territory ceded by way of indemnity." The Diamond Rings, 183 U. S. 176 (1901), 46 L. Ed. 138. But in Vilas *v.* Manila (1911) 220 U. S. 345, 55 L. Ed. 491 appears this language—"in connection with the clause agreeing to pay Spain twenty million dollars *for the cession of the Philippine group.*" Many authors, as Woodrow Wilson, Division and Reunion, p. 337, take for granted that the Islands were purchased. Whitelaw Reid, a member of the Peace Commission, in speeches before the Lotus and Marquette Clubs, February 11 and 13, 1899, implies that the Philippines were taken by way of indemnity. Whitelaw Reid, Problems of Expansion, pp. 29, 30, 37.

[21] Elbert J. Benton, International Law and Diplomacy of the Spanish-American War, p. 251; The Treaty of Peace and Accompanying Papers, p. 109. "The facts of the case disclose that this sum was agreed upon rather to arrive at an amicable agreement, because if the United States had so wished, the cession of the Philippines unconditionally, like that of Porto Rico, could have been demanded, for after all the Americans were the victors." José Gil, The Treaty of Paris, unpublished thesis.

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Roman Catholic Church and solemnly safeguarded its property rights. Article IX. guarantees Spaniards in their property rights and allowed them to retain their status as citizens of Spain by registering as such within one year from the taking effect of the treaty. The period of registration of Spanish citizens in the Philippines was subsequently extended, by mutual convention, for six months from April 11, 1900.[22] The last paragraph of this article provides: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Article X. secures religious freedom. Article XI. gives the rights of Spaniards before the courts. Article XII. enumerates the rules to be followed relative to pending judicial proceedings. Article XIII. protected Spanish copyrights and patents[23] and admitted certain

[22] 31 Stats. at L., 1881; Foreign Relations, United States, 1899, pp. 714-20, and *id.*, 1900, pp. 889, 890.

[23] By virtue of the foregoing provisions of said treaty, Circular No. 12, Division of Customs and Insular Affairs, dated Washington, D. C., April 11, 1899, was issued by the Assistant Secretary of War and is as follows:

"In territory subject to military government by the military forces of the United States, owners of patents, including design patents, which have been issued or which may hereafter be issued, and owners of trade-marks, prints, and labels, duly registered in the United States Patent Office, under the laws of the United States relating to the grant of patents and the registration of trade-marks, prints, and labels, shall receive the protection accorded them in the United States under said laws; and an infringement of the rights secured by lawful issue of a patent or by registration of a trade-mark, print, or label shall subject the person or party guilty of such infringement to the liability created and imposed by the laws of the United States relating to said matters: *Provided,* That a duly certified copy of the patents or of the certificate of registration of the trade-mark, print, or label shall be respected in said territory the same as if such laws were in full force and effect.

(Signed) "G. D. MEIKLEJOHN,
"Assistant Secretary of War."

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Spanish works free of duty for a period of ten years from the date of exchange of ratifications of the treaty.[24] Many of these provisions, it will be noted, were superfluous, being mere restatements of well recognized principles of the public law. The other articles not mentioned had little effect on the Philippines.

§ 67. Reasons for retention.[25]—The war with Spain had been entered upon with the sole aim of putting an end to the intolerable conditions that existed in Cuba. At the time of the outbreak of the war and in fact for a considerable period thereafter, the Philippines were to the United States a *terra incognita*—not even a "geographical expression." [25a] This fact is plainly borne out, in that in a long official letter transmitting the files of the Asiatic Squadron to its new commander-in-chief, then Commodore Dewey, the only reference to the Philippines was a short paragraph to the effect that "for some time the newspapers have contained accounts of a rebellion in progress in the Philippines;" but that "no official information has been received in relation thereto, and no

Circular No. 21, Division of Customs and Insular Affairs, dated Washington, D. C., June 1, 1899, as amended by Circular No. 34 of the same Department, dated September 25, 1899, required the holder of patents in the insular possessions of the United States to file with the proper authorities a certified copy of a patent or a certificate of registration, etc. See Gsell *v.* Yap-Jue (1906), 6 Phil. 143, 146.

[24] Section 13 of the treaty with Spain of 1898, protecting industrial property in the ceded territory, will not be construed as contravening principles of morality and fairness and as protecting a trade-mark fraudulently registered prior to the treaty. Ubeda *v.* Ziálcita (1912), 226 U. S. 452, 57 L. Ed. 296.

[25] See generally Coolidge, The United States as a World Power, particularly pp. 148, 151, 199, 346; Máximo Kalaw, The Case for the Filipinos, Ch. II.

[25a] Senator Williams of Mississippi tells how as a member of the House Committee on Foreign Relations during the Spanish-American War it was one of his arduous tasks to climb upon a stool and point out the Islands on the map for the benefit of his colleagues.

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information of any sort that shows American interests to be affected." [26] When Commodore Dewey sought information on the subject in Washington, he found that the latest official report relative to the Philippines on file in the office of naval intelligence bore the date of 1876. Deep designs on the Philippines by the United States on account of the declaration of war against Spain can, therefore, not rightly be imputed to the American people. "At the beginning of the war there was perhaps not a soul in the whole Republic who so much as thought of the possibility of his nation becoming a sovereign power in the Orient." [27] The United States found herself established as a world power with station in the far East merely as an accident of the war. But with Spain brought to her knees, and with American military forces triumphantly occupying Manila and Manila Bay, and engaging the Filipino insurgents even before peace was ratified, the United States was in a position to decide the Philippine question for herself, for Spain, for the Philippine Revolutionary Government, and for the world.

[26] Autobiography of George Dewey, Admiral of the Navy, p. 175.

[27] Reinsch, World Politics, p. 64. Yet it is interesting to note that about thirty years previous the German writer Jagor had prophesied: "In proportion as the navigation of the west coast of America extends the influence of the American element over the South Sea, the captivating, magic power which the great republic exercises over the Spanish colonies will not fail to make itself felt also in the Philippines. The Americans are evidently destined to bring to a full development the germs originated by the Spaniards. As conquerors of modern times, they pursue their road to victory with the assistance of the pioneer's axe and plough, representing an age of peace and commercial prosperity in contrast to that bygone and chivalrous age whose champions were upheld by the cross and protected by the sword." Travels in the Philippines, Eng. Ed., p. 369. The preamble to the Philippine Autonomy Act (Act of Congress of August 29, 1916) begins: "Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement."

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Several courses of action were open. The Philippines could be returned to Spain. But this would have been a betrayal of the Filipino people, and a shirking of a duty similar to that which had sent American troops into Cuba. "The government of Spain's colonies had everywhere failed and gone to hopeless decay. It would have been impossible, it would have been intolerable, to set it up again where it had collapsed." [28] The Philippines could be turned over to the Philippine Revolutionary government. But having practically forced Spain out of the islands, it was not thought that the United States could safely withdraw while the people had not capacity sufficient for establishing a real republic, capable of preventing anarchy, internal dissension or sanguinary dictatorship, or quick seizure by a foreign power.[29] The Philippines could be sold or presented as a gift to another

[28] Woodrow Wilson, A History of the American People, Vol. V, pp. 295, 296.

[29] "There is nothing to show, by a review of accomplished facts, that, without foreign intervention, the Filipinos would have prospered in their rebellion against Spain. Even if they had expelled the Spaniards their independence would have been of short duration, for they would have lost it again in the struggle with some colony-grabbing nation." Foreman, The Philippine Islands (3rd Ed., 1906), p. 8. "After the battle of Manila Bay, while other countries, as is usual under such conditions, sent a few ships of war to look after the interests of their citizens, Germany, without any obvious reason, hastily despatched to the scene of action her Pacific squadron—a force equal in strength to the fleet of Admiral Dewey. The Americans believed that this force came in no friendly spirit, but in the hope of taking advantage of the confusion to pick up something for Germany; and their distrust was intensified by the reports they heard of its behavior. Fear that the Germans might establish themselves in the Philippines was one of the motives that induced the United States to take over the islands. When, later, they purchased from Spain the Carolines and the Ladrones, this was taken as proof that the suspicion had been well founded." Coolidge, The United States as a World Power, p. 199.

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power. But such a proceeding would have been incompatible with national honor, would have raised up jealousies on the part of other countries, and would have been bitterly opposed by the Filipinos.[30] The last obvious

[30] (From Senate Document 62, p. 360.)

Cavite, June 10, 1898.

"To the President of the Republic of the Great American Nation . . . "At the same time, as I am always frank and open, I must express to you the great sorrow which all of us Filipinos felt on reading in the Times, a newspaper of the greatest circulation and reputation in the whole world, in its issue of the fifth of last month, the astounding statement that you, sir, will retain these Islands until the end of the war, and, if Spain fails to pay the indemnity, will sell them to a European power, preferably to Great Britain. But we found a palliative to our sorrows in the improbability and suddenness of that statement, as common sense refuses to believe that so sensible a public man as you would venture to make an assertion so contrary to common sense, before events are entirely consummated, as you well know that if God favors the triumph of your arms to-day, to-morrow he may defeat them and give victory to Spain, and because such an assertion is not consistent with the protection of which you make a boast toward this unfortunate people which has been groaning for more than three centuries in the clutches of a nation which has for its shield (emblem) the lion, one of the ferocious animals, although she displays it as an emblem of nobility, which she certainly does not possess, besides the fact that it is opposed to your noble and generous sentiments to wish to sell these islands to a European power such as England, thereby making us pass under the domination of that nation, which although it has a truly liberal government, partakes none the less of the nature of a tyranny that is monarchical. . . .

"I close by protesting once and a thousand times, in the name of this people, which knows how to fight for its honor by means of its improvised warriors and artillerymen, against the statement published in the Times, mainly for the purpose of casting a blot in history upon its glorious name, a people which trusts blindly in you not to abandon it to the tyranny of Spain, but to leave it free and independent, even if you make peace with Spain, and I offer fervent prayers for the ever increasing prosperity of your powerful nation, to which and to you I shall show unbounded gratitude, and shall repay with interest that great obligation.

"Your humble servant,

"EMILIO AGUINALDO."

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course was for the United States to take the Philippines.[31]

Responsibility for the acquisition of the Philippines must of course rest with President McKinley.[32] His

This note is appended to Whitelaw Reid's (a member of the Peace Commission) Problems of Expansion, p. 36—"At this time (February 13, 1899) it was still a secret that among the many intrigues afoot during the negotiations at Paris was one for the transfer of the Philippines to Belgium. But for the perfectly correct attitude of King Leopold, it might have had a chance to succeed, or at least to make trouble."

[31] The thought of the time is well illustrated by Senator Lodge writing in 1899:

"The forces which had been let loose by the Spanish war were world forces, and they represented their arguments with the grim silence and the unforgiving certainty of fate. Will you go away and leave the Filipinos to Spain, they asked, leave them to a tyranny and oppression tenfold worse than that in Cuba which carried you into the war? Clearly impossible. Will you force Spain out of the Islands, and then, having destroyed the only government and the only sovereignty which have ever existed there, will you depart yourselves and leave the Islands to anarchy and bloodshed, to sanguinary dictatorship, and to the quick seizure of European powers and a possible world-wide war over the spoils? Again clearly impossible. Again no thoroughfare. Again a proposition which no strong, high-spirited people could entertain. Will you, then, call in the other powers of the earth to help you settle the question of these Islands, determine their destiny, and establish a government for their people? Once more, no. Such a solution is incompatible with decent pride and honest self-respect, and could lead only to mischief and confusion, to wars and rumors of wars. What then will you do? Is there aught you can do but replace the sovereignty you have dashed down, and with your own sovereignty meet the responsibilities which have come to you in the evolution of the time, and take yourselves the Islands you have won? Quite clearly now the answer comes that no other course is possible." Lodge, The War with Spain, pp. 228, 229. See also Coolidge, The United States as a World Power, p. 151. "A diplomat who was very near to President McKinley in 1898 said that the Philippines were annexed because nobody could suggest any other feasible way of dealing with them." Hart, The Obvious Orient, p. 281.

[32] "The question has often been asked, who was responsible for

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view point, his course of reasoning is then most important. In telegraphic instructions to the American Peace Commission on October 28, 1898, Secretary of State Hay said:

"It is imperative upon us that as victors we should be governed only by motives which will exalt our nation. Territorial expansion should be our last concern; that we shall not shrink the moral obligations of our victory is of the greatest. It is undisputed that Spain's authority is permanently destroyed in every part of the Philippines. To leave any part in her feeble control now would increase our difficulties and be opposed to the interests of humanity. The sentiment in the United States is almost universal that the people of the Philippines, whatever else is done, must be liberated from Spanish domination. In this sentiment the President fully concurs. Nor can we permit Spain to transfer any of the islands to another power. Nor can we invite another power or powers to join the United States in sovereignty over them. We must either hold them or turn them back to Spain.

"Consequently, grave as are the responsibilities and unforeseen as are the difficulties which are before us, the President can see but one plain path of duty—the acceptance of the Archipelago. Greater difficulties and more serious complications, administrative and international, would follow any other course. The President has given to the views of the Commissioners the fullest consideration, and in reaching the conclusion above announced, in the light of information communicated to the Commission and to the President since your departure, he has

the treaty of 1899, particularly for the acquisition of the Philippine Islands? Attempts have been made to fix the responsibility on Admiral Dewey, on the Peace Commissioners, on the Senate, and on the American people; but the responsibility must, of course, rest on President McKinley." Latané, America as a World Power, 1897-1907, p. 78.

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been influenced by the single consideration of duty and humanity." [33]

That the President was a faithful transmitter of a large part of American public opinion and was without doubt influenced by it, is seen in his final instructions to the

[33]Foreign Relations, 1898, p. 937. "The position of Mr. McKinley in regard to the Philippines may be gathered from a statement which he made to a party of clergymen, a committee from a religious gathering in Washington, who called upon him on November 21, 1899. After their interview, as they arose to go, the President detained them for a moment to say, as reported in *The Christian Advocate*:

"'Before you go I should like to say just a word about the Philippine business. I have been criticized a good deal about the Philippines, but I don't deserve it. The truth is, I didn't want the Philippines, and when they came to us, as a gift from the gods, I did not know what to do with them. When the Spanish war broke out, Dewey was at Hongkong, and I ordered him to go to Manila, and he had to; because, if defeated, he had no place to refit on that side of the globe, and if the Dons were victorious they would likely cross the Pacific and ravage our Oregon and California coasts. And so he had to destroy the Spanish fleet, and did it! But that was as far as I thought then. When next I realized that the Philippines had dropped into our lap, I confess that I did not know what to do with them. I sought counsel from all sides—Democrats as well as Republicans—but got little help. I thought first we would take only Manila; then Luzon; then other islands, perhaps, also. I walked the floor of the White House night after night until midnight; and I am not ashamed to tell you, gentlemen, that I went down on my knees and prayed Almighty God for light and guidance more than one night.

"'And one night late it came to me this way—I don't know how it was, but it came: (1) That we could not give them back to Spain—that would be cowardly and dishonorable; (2) that we could not turn them to France or Germany—that would be bad business and discreditable; (3) that we could not leave them to themselves—they were unfit for self-government—and they would soon have anarchy and misrule over there worse than Spain's was; and (4) that there was nothing left for us to do but to take them all, and to educate the Filipinos, and uplift and civilize and Christianize them, and, by God's grace, do the very best we could by them, as our fellowmen for whom Christ also died. And then

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Peace Commission.[34] Varying and conflicting motives impelled to his decision. In the first place, natural human exaltation over a great victory was inevitable. Ardent belief in the fulfillment of America's manifest destiny and disinclination to haul down the Flag where it had once been planted became the result.[35] Patriotism! An altrustic and sincere desire to improve the condition of the Filipinos and to prepare them for self-government was apparent. A course which would best subserve the interests of the Filipino people, which would guard their welfare, and which would lead to their political emancipation, again became the result.[36] Humanitarianism! A belief that Providence had opened a way for the spread of civilization and for Christian conversion influenced many. A vision of missionary conquest again became the re-

I went to bed, and went to sleep, and slept soundly, and the next morning I sent for the chief engineer of the War Department (our map maker), and told him to put the Philippines on the map of the United States' (pointing to a large map on the wall of his office); 'and there they are, and there they will stay while I am President!'" Devins, an observer in the Philippines, pp. 69-71; Stuntz, The Philippines and the Far East, pp. 143, 144.

[34] See sec. 66, *supra*.

[35] The movement for the retention of the Philippines was "the natural impulse of a people full of exultation and pride over the completeness, without precedent in naval wars, of the victory that Dewey had achieved with a skill and intrepidity that conferred splendor upon American arms. It was the spontaneous outburst of simplest patriotism to ask that that flag, so valiantly planted, might float forever in memory of the heroes who raised it." Henry Watterson, History of the Spanish-American War, p. 277.

[36] "President McKinley's motive in compelling Spain to cede to the United States her sovereignty over the Philippine Islands was the humanitarian object of liberating the Filipinos from misgovernment and oppression. . . . The political emancipation of the Filipinos was the controlling object with the President and people of the United States. I am, of course, aware that other and less worthy aims appealed to individual Americans and to groups of Americans. It would be strange if it were otherwise, considering

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sult.[37] Religion! A quick comprehension of the possibilities of trade expansion and a desire for new markets, all for the profit of the United States affected the business interests. The retention of the Philippines in order to use them as a base for the Eastern trade, especially of China, again became the result.[38] Commercialism! Thus

how diversified human motives are apt to be. The jingo saw in the annexation of the Philippines another avenue for spread-eagleism; to Americans in the Orient it meant an accession of American influence in Asia; to the Protestant churchman it offered a new field for missionary enterprise; the exploiting capitalist was fascinated by the riches of the Philippine forests, lands, and mines, which showed like 'the wealth of Ormus of Ind'; and the sensational press, still delirious from the fever of war and surfeited with the staleness of piping peace, discerned in the Philippines material for new sensations which promised to be as stirring as the excitant was remote, unknown, and dangerously explosive. All these influences, and others, were undoubtedly at work. Yet it was not these forces singly or in combination that carried the day; it was the humanitarian object of liberating the Filipinos from Spanish tyranny and bestowing upon them the boon of freedom that decided the President and people of the United States to compel Spain to cede to us her sovereignty over the Philippine Islands." Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, pp. 3, 83.

[37] "Many clergymen and editors of religious papers agreed with the idea expressed by President McKinley that Providence had opened a way for the spread of American civilization in the East." Latané, America as a World Power, 1897-1907, p. 72.

[38] "A quick instinct apprised American statesmen that they had come to a turning point in the progress of the nation, which would have disclosed itself in some other way if not in this, had the war for Cuba not made it plain. It had turned from developing its own resources to make conquest of the markets of the world. The great East was the market all the world coveted now, the market for which statesmen as well as merchants must plan and play their game of competition, the market to which diplomacy, and if need be power, must make an open way. The United States could not easily have dispensed with that foothold in the East which the

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not Patriotism, nor Humanitarianism, nor Religion, nor Commercialism, singly led to the Philippine acquisition, but all in combination made up American public opinion and, together with the line of reasoning which arrived at the conclusion that the Philippines could not be returned to Spain, could not be handed over to the Revolutionary government, and could not be ceded to a foreign power, led to the same goal—the Philippines must be acquired and retained. All this be it understood was American public opinion analyzed from an American view point as translated into American action.

§ 68. Title to the Philippines.—By the law of nations, the title of the United States to the Philippines could rest either on conquest or cession. The President of the United States intimated that the first could be claimed when in supplemental instructions to the American Commissioners on October 28, 1898, through the Secretary of State, it was said that "While the Philip-

possession of the Philippines so unexpectedly afforded them. The dream of their own poet had been fulfilled,

> 'See, vast trackless spaces,
> As in a dream they change, they swiftly fill,
> Countless masses debouch upon them,
> They are now covered with people, arts, institutions.'

The spaces of their own continent were occupied and reduced to the uses of civilization; they had no frontiers wherewith 'to satisfy the feet of the young men': these new frontiers in the Indies and in the far Pacific came to them as if out of the very necessity of the new career set before them. It was significant how uncritically the people accepted the unlooked for consequences of the war, with what naive enthusiasm they hailed the conquests of their fleets and armies. It was the experience of the Mexican war repeated." Woodrow Wilson, A History of the American People, Vol. 5, p. 296.

Fairly representative of the business view was an article by Frank A. Vanderlip, then Assistant Secretary of the Treasury, entitled "Facts about the Philippines," LVI Century Magazine, August, 1898, p. 555.

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pines can be justly claimed by conquest, which position must not be yielded, yet their disposition, control, and government the President prefers should be the subject of negotiation." [39] That claim to dominion under conquest was hardly tenable [40] appears from a telegram of the President of the American Commission of November 3, 1898—"After a careful examination of the authorities *the majority of the Commission are clearly of the opinion that our demand for the Philippine Islands cannot be based on conquest.* When the protocol was signed Manila was not captured, siege was in progress, and capture made after the execution of the protocol. Captures made after agreement for armistice must be disregarded and *status quo* restored as far as practicable. We can require cession of the Philppine Islands only as an indemnity for losses and expenses of the war."

On the other hand, a valid title by cession has been impeached on the grounds that this could not be acquired without the express consent of the inhabitants of the Philippines, and that since Spanish sovereignty had in reality ceased to exist Spain had nothing to cede. The Filipino delegate at Paris and Washington, Felipe Agoncillo, sets forth these contentions as follows: "There has been no moment of time when the United States could

[39] Foreign Relations, 1898, p. 937.

[40] "At the time the delegates to the Peace Conference scarcely comprehended that a rebellion was included with the purchase. *We were far from being in possession of the property which we had bought.* Manila was only the capital city of the most important of a group of many islands, with many capitals, in all of which we must establish authority." Autobiography of George Dewey, Admiral of the Navy. p. 284. But the Judge Advocate General in an opinion of September 30, 1909, states that "The Philippine Islands were acquired by the United States during the war of 1898 with Spain, *the title by conquest having been perfected by the treaty* of December 10, 1898, between the United States and Spain, (30 Stat. at L., 1754.)"

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have acquired any title to the Philippine Islands, save by the express consent of their inhabitants, and that, such consent not having been given, and Spain having, as it must be confessed, no practical jurisdiction or control over the Philippine Islands since June 18, 1898, she is without power to pass title to any other nation. . . . May I further call your attention to the fact that although a treaty of peace has been signed between the United States and the Kingdom of Spain, by the terms of which Spain ceded her sovereignty over the Philippine Islands to the United States, in fact Spain had no sovereignty whatever to cede. As before recited, at the time of such signature, an independent government, performing all its functions as a government, and entitled to recognition as such by the strictest rules laid down by all the American Secretaries of State, was in possession of all of the islands, except the port of Manila, controlled by the Americans, and the port of Iloilo, where the Spanish were besieged; the possession of Manila by the Americans having been obtained by them through the joint action of the American and Philippine armies, the Filipinos having prevented exit from the city on several sides while the Americans attacked on one side."[41] Against the first objection is this—"The principle that the wishes of a population are to be consulted when the territory

[41] Memorandum of Felipe Agoncillo, Relative to the Right of the Philippine Republic to Recognition Accompanying Letter to the Honorable the Secretary of State, of date January 11, 1899, pp. 12, 15. Also to same effect, Agoncillo's Memorial to the U. S. Senate of January 30, 1899, quoted in Kalaw, The Case for the Filipinos, pp. 64-78. Mabini in a Manifesto on behalf of the Revolutionary Government, of April 15, 1899, said: "You clearly see that the North American government undertakes to extend its sovereignty over the Philippine Islands, basing its claim upon a title null and void. This title is the treaty of Paris, agreed to by the Spanish-American Commission the 10th of last December, and ratified, according to the commission that signs this address,

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which they inhabit is ceded has not been adopted into international law, and can not be adopted into it until title by conquest has disappeared." [42] This is a rule always followed by the United States and recognized the world over. Yet while the desires of the inhabitants, somewhat in the status of tenants, were legally unimportant and while Spain could renounce her rights over the islands in favor of the United States, even the highest law of the land could not make the people, American subjects against their will.[43] Discussing the second objec-

by the American government some weeks ago, and by that of Spain on the 20th of last March. This contract to cede the islands was concerted and concluded when the Spanish domination had already ceased in the Philippines, thanks to the triumph of our arms. Moreover, in this act of cession no voice whatever was allowed the representatives of the Philippine people to which belongs the sovereignty of the islands by natural right and international laws." Quoted in Harper's History of the War in the Philippines, p 158; and in Speech of Hon. George F. Hoar in the Senate, April 17, 1900, p. 65.

[42] Hall, International Law, 4th Ed., p. 49; Mr. Sherman, Sec. of State to the Japanese Minister, Aug. 14, 1897, I Moore, Int. Law Dig., p. 274; Butler, Treaty Making Power of the United States, Vol. I, secs. 46-49.

[43] "It is true that by the treaty of peace Spain ceded to the United States the Philippine Islands and that the United States agreed to pay to Spain $20,000,000. But it is important to consider the legal effect of such a treaty. What is it that Spain has sold and the United States purchased? Has Spain sold the Filipinos and have we bought them as so many cattle or as so many slaves? I deny that that is the legal effect of the treaty. Spain has simply renounced its rights over those Islands and this it has done in our favor. But it has not and it could not make those people our subjects against their will. The law does not compel these people to accept the United States as sovereign over them. The subjects of a state are not at that state's disposal like a farm or a herd of cattle. If during the revolution Great Britain had ceded her American colonies to Turkey, would the colonists have been under obligations to accept the supremacy of the Sultan? Or if during the civil war the United States had ceded the southern states to

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tion, ex-President Harrison in an address before the University of Michigan in December, 1900, said: "Our title to the Philippines has been impeached by some upon the ground that Spain was not in possession when she conveyed them to us. It is a principle of private law that a deed of property adversely held is not good. . . . It has not been shown, however, that this principle has been incorporated into international law; and, if that could be shown, there would still be need to show that Spain had been effectively ousted." [44] In the Diamond Rings Case [45] a contention was made that complete possession of the Philippines was not taken by the United States. The Chief Justice said:

"The sovereignty of Spain over the Philippines and possession under claim of title had existed for a long series of years prior to the war with the United States.

Mexico, would the people within the ceded territory have been under obligations to submit themselves to the wishes of the ruler of Mexico? I think not.

"Let me quote from the law of nations as it is laid down by Vattel. That writer, after conceding that in cases of necessity one state may cede to another a portion of its territory, goes on to say: 'When, therefore, in such a case the state gives up a town or a province to a neighbor or to a powerful enemy the cession ought to remain as valid as to the state, since she had the right to make it; nor can she any longer lay claim to the town or province thus alienated, since she has relinquished every right she could have over it. But the province or town thus abandoned and dismembered from the state is not obliged to receive the new master whom the state attempted to set over it. Being separated from the society of which it was a member, it resumes all of its original rights, and if it be capable of defending its liberty against the prince who would subject it to his authority it may lawfully resist him.'" Henry Wade Rogers, former Dean of the Yale Law School, now Circuit Judge, in an address on April 30, 1899, at Central Music Hall, Chicago.

[44] 172 No. Am. Rev., Jan., 1901, p. 3. Same in Views of an Ex-President, pp. 188, 189.

[45] 183 U. S. 176, 46 L. Ed. 138 (1901).

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The fact that there were insurrections against her, or that uncivilized tribes may have defied her will, did not affect the validity of her title. She granted the islands to the United States, and the grantee in accepting them took nothing less than the whole grant.

"If those in insurrection against Spain continued in insurrection against the United States, the legal title and possession of the latter remain unaffected.

"We do not understand that it is claimed that in carrying on the pending hostilities the government is seeking to subjugate the people of a foreign country, but, on the contrary, that it is preserving order and suppressing insurrection in the territory of the United States. It follows that the possession of the United States is adequate possession under legal title, and this cannot be asserted for one purpose and denied for another. We dismiss the suggested distinction as untenable."

An abstract of title to the Philippines would therefore read: Spain's title to the Philippines rested on the public law of the period respecting discovery and occupation. In the words of Mr. Chief Justice Marshall the "principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession." [46] That Spain had not reclaimed all parts of the Archipelago and that she had not bent all its people to her will did not affect her possession and so her legal title.[47] That the actual sovereignty of Spain had been displaced did not imply that the right of sovereignty had been destroyed. It was this title which Spain transferred to the United States by the Treaty of Paris. It was this title which the

[46] Johnson *v.* McIntosh (1823) 8 Wheat. 543, 572, 5 L. Ed. 681, 688.

[47] C. F. Randolph, Law and Policy of Annexation, pp. 1-4.

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Filipino people had the right to object to in the courts of war but which was therein perfected by conquest in the Filipino insurrection.

Such a title could only be contested by a foreign power. Its determination, morever, is a political question binding on the judiciary. No court could assume jurisdiction over a matter of sovereignty—while "it is not to be doubted that any international tribunal would affirm the completeness of our legal title to the Philippines." [48]

Second Step—Presidential Government Instituted.

§ 69. Military rule.—Commencing with the destruction of the Spanish fleet on May 1, 1898, the American Navy and later its Army occupied Manila Bay and Cavite.[49] President McKinley issued instructions to the Commander-in-Chief of the forces on May 19.[50] Manila surrendered on August 13.[51] General Merritt assumed the duties of Military Governor on August 26.

Following capitulation on August 14, General Merritt issued a proclamation "to the people of the Philippines" similar in phraseology to the instructions of the President. The proclamation [52] consisted chiefly of an enum-

[48] Ex-President Harrison, *supra*. See Gray, J., in Jones *v.* U. S. (1890) 137 U. S. 202, 212, 34 L. Ed. 691, citing cases.

[49] The battle of Manila is described in Autobiography of George Dewey, Admiral of the Navy, Ch. XV; and by Rear-Admiral Chadwick, in The Relations of the United States and Spain, Vol. 1, Ch. VI.

[50] Richardson's Messages and Papers of the Presidents, Vol. X, p. 208; Off. Gaz., Jan. 1, 1903, p. 1; Blount, The American Occupation of the Philippines, pp. 50-52. The period from May 1, 1898, to August 13, 1898, is described in Autobiography of George Dewey, *id.*, Chs. XVI, XVII.

[51] The taking of Manila is described in Autobiography of George Dewey, *id.*, Ch. XVIII; and by Rear-Admiral Chadwick *id.*, Vol. 2, Ch. XIX.

[52] Printed in Off. Gaz., Jan. 1, 1903, p. 3.

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eration of the fundamental rules of international law concerning the rights and duties of a military occupant. The administration of civil affairs was taken over; provost marshall and other courts were organized; and the divisions of the Spanish administration were continued in existence and reorganized, with American army officers in charge.[53] The Secretary to the Military Governor was charged with the duty of supervising the civil branch of the government. As additional territory was brought under the control of the United States forces, civil administration was extended.

Certain accomplishments of the military of a civil nature were of such importance that they merit special mention. These include the promulgation of a tariff; organization of the schools, of the judiciary, and of local gov-

[53] "General Merritt's first act of administration was to appoint General MacArthur Provost-Marshall and Military Governor of the walled town, and a day or two later he turned over the administration of the finances to General Greene, who was to perform the duties of the officer known as *Intendente-General de Hacienda,* appointed Major C. H. Whipple to take charge of the public funds, and Lieutenant-Colonel Whittier to be collector of customs, with Lieutenant-Colonel Colton as deputy. Then the other important offices were filled as the necessities of the situation demanded, Major Bement taking the position of collector of internal revenue, Lieutenant-Colonel Jewett that of provost judge, and the duties of captain of the port were entrusted to Captain Glass, of the navy. Practically within a few hours after the signing of the terms of capitulation, the new machinery of administration was set in motion. The men appointed to office were all eminently fitted for their different positions, and were familiar with operations similar to those which they were to undertake. Hence there was little or no delay in dealing with the complicated and intricate problems which arose in the extraordinary situation, except that caused by the Spaniards themselves, who stubbornly refused to give up their offices, resorting to the most childish and undignified tricks to obstruct and hinder the newly appointed officers in the performance of their duties." Millet, The Expedition to the Philippines, pp. 176, 177.

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ernments; negotiation of the Bates Treaty; and the sanction of the Negros Constitution.

The Spanish tariff on goods entering the Philippines was continued in force until an order of the President of July 12, 1898, modifying somewhat the schedules of the Spanish law was put in force on November 10 of the same year.[54] The latter remained in full effect[55] until November 15, 1901, when the tariff established by Act 230 of the Philippine Commission became operative.

Within three weeks after Manila fell, seven schools were opened in Manila under the direction of an army chaplain.[56] Enlisted men were detailed as teachers. The school system was enlarged as rapidly as was practicable.

Civil courts[57] were not permanently established until the issuance of General Orders No. 20 of the Military Governor on May 29, 1899, and of General Orders No. 21 on June 5, 1899. The Supreme Court and inferior courts had previously been suspended in their criminal jurisdiction since August 13, 1898, and the Supreme Court as to civil affairs since January 20, 1899. In the interval, provost marshall courts, court marshalls, and military tribunals, under army officers, controlled judicial matters. Military commissions existed until the Amnesty Proclamation by the President of July 4, 1902.[58] General Orders No. 20[59] constituted a Supreme Court of

[54] See Government of the Philippine Islands *v.* Standard Oil Co. (1911) 20 Phil. 30, 35.

[55] But see Warner, Barnes & Co. *v.* U. S. (1905) 197 U. S. 419, 49 L. Ed. 816, (1906) 202 U. S. 484, 50 L. Ed. 1117.

[56] Census of the Philippines, 1903, Vol. III, p. 639.

[57] See generally, Report of the Military Governor, 1899, pp. 58-60, 241-244; Report, First Philippine Commission, 1900, Vol. I, pp. 122-124; Census of the Philippine Islands, 1903, Vol. I, pp. 407-409.

[58] Cabantag *v.* Wolfe (1906) 6 Phil. 273.

[59] Printed in Report of the Military Governor, 1899, p. 242, and in the Off. Gaz. for May 1, 1903, at page 5. "The most distinguished lawyer in the Islands, Don Cayetano Arellano, was appointed

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nine judges, six of whom were distinguished Filipino lawyers and three officers of the American Army with legal experience. General Orders No. 21 [60] created Courts of First Instance and justice of the peace courts for each of the four judicial districts of the city of Manila. Subsequently the Courts of First Instance of several provinces were reorganized.[61] These courts were given the jurisdiction, which they had prior to American occupation, administering those laws continuing in force except as modified by authority of the United States. Offenses prejudicial to military administration and discipline continued to appertain to the military courts.

In response to a public petition, Baliuag, in May, 1899, became the first town to hold an election under American supervision.[62] Four Cavite municipalities followed suit. General Orders No. 43,[63] dated August 8, 1899, was

President of the Supreme Court. Other members of the bench were drawn, not only from Luzon, but also from the Visayan Islands. They are all men of high professional reputation and spotless character. In the civil bench of the court Don Manuel Araullo is the president. The associate justices were Don Gregorio Araneta and Lieut. Col. E. H. Crowder, Judge-advocate United States volunteers. In the criminal branch Don Raymundo Melliza was appointed president. The associate justices were Don Ambrosio Rianzares; Don Julio Llorente; Maj. R. W. Young, Utah Volunteer Light Artillery; and Col. W. E. Birkhimer, U. S. V. The Attorney-General was Don Florentino Torres." Report of the First Philippine Commission, Vol. 1, pp. 122-124.

[60] Report of the Military Governor, 1899, pp. 243, 244.

[61] Reorganization of Courts under the military government described in detail by Gregorio Araneta, Cablenews-American Yearly Review Number, 1911, p. 32.

[62] Le Roy, The Americans in the Philippines, Vol. II, pp. 68, 283, 284.

[63] Printed in Off. Gaz., Jan. 1, 1903, p. 7. See also Annual Report of the Military Governor, 1899, pp. 239, 240. The framework of the municipal government at San Fernando, Pampanga, is given by Robinson, The Philippines: The War and the People, pp. 307, 308.

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thereafter issued providing a rough plan drawn from former Spanish decrees and customs for temporary local governments along the railroad and within the territory of American occupation. A few months later a board consisting of Chief Justice Arellano, Attorney-General Torres, and three American judicial officers [64] reported a general statute for the organization of municipalities, based to a considerable degree on the Maura Law, which was promulgated as General Orders No. 40 [65] on March 29, 1900. Comparatively few towns were organized

[64] Appointed by G. O. No. 18 of January 29, 1900. Otis's Report, 1900, pp. 280, 281.

[65] Printed in Otis's Report, 1900, pp. 281-291 and in I Off. Gaz., Jan. 1, 1903, p. 11. The first three paragraphs read:

"Manila, P. I., March 29, 1900.

"The board of which his honor, Don Cayetano Arellano, Chief Justice of the Philippines, is president, and which was called in General Orders, No. 18, of January 29 last, from this office, to submit a form of municipal government for such of the *municipios* of the Islands as are prepared to adopt representative control over their own civil affairs, and which may become applicable to others as soon as they demonstrate a fitness for self-administration, having reported a plan of government which meets existing conditions, the same is approved and will receive practical application in accordance with the mode of procedure therein outlined.

"It is with great satisfaction that the United States authorities, in consonance with former promises, promulgates in this order the law by which the municipalities of the towns of the Philippines are to be established and governed in the future. The law is inspired by a genuinely liberal spirit and the principles of autonomous government. It is in itself educating. It is calculated to urge on the people in the path of true progress, if they are desirous to understand their duties as free citizens and make legitimate use of their privileges.

"For the first time the Philippine people are to exercise the right of suffrage in the election of municipal officers—a right only slightly restricted by conditions which have been imposed for the purpose of rewarding as well as encouraging the people in their just and natural aspirations to become educated, and worthy to enjoy all the benefits of civilization."

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under this order before the Commission began to exercise its functions.[66]

An agreement, known as the "Bates Treaty" [67] was negotiated by General John C. Bates with the Sultan of Sulu and his powerful chiefs on August 10, 1899. The treaty while declaring and recognizing the sovereignty of the United States, left the actual affairs of government in the Sultan's hands. It was confirmed by the President but not by Congress. Becoming a source of embarrassment, the so-called "treaty" was abrogated on March 21, 1904, as an obstacle to direct control and good government.[68]

[66] William H. Taft, Civil Government in the Philippines, 71; Outlook, May 31, 1902, p. 305.

[67] See President McKinley, Third Annual Message, Dec. 5, 1899; Senate Document 136, 56th Congress, 1st Sess., p. 28; Harper's History of the War in the Philippines, pp. 239-243, 403-405. Negotiations described by General Otis in Report for 1899, p. 156. Facsimile of the Agreement entered into with the Sultan of Sulu, August 20, 1899, from the original in the Department of State, Washington, in McKinley, Island Possessions of the United States, pp. 200, 201; quoted pp. 283, 284.

[68] "The treaty continued in force until March 21, 1904. This so-called 'treaty' was the source of much embarrassment and difficulty almost from the moment it was signed. General Bates had fallen into the serious error of supposing that the 'Sultan' of Sulu exercised some real control over the Moros, whereas the truth turned out to be that he was but one of a group of chiefs. The treaty itself was highly unsatisfactory, even in the English version, which General Bates supposed represented the Sultan's understanding of the agreement. In brief, the agreement provided that the religion and customs of the Moros should be maintained, and that salaries aggregating about $9,120 annually should be paid by our government to the Sultan and his chief men. In return, the authority and sovereignty of the United States were nominally recognized, and this was substantially the only concession made to our government. . . . But the Bates treaty, in the eyes of the Moros themselves, was a document very different in character from that which General Bates supposed he had signed. Neither he nor any of his associates understood a word of the Sulu language, and

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In Negros with the assistance of its military governor, a premature scheme to establish civil government was inaugurated.[69] Delegates met in constitutional convention and after long labors framed an elaborate constitution, following largely the framework of a State of the American Union, for submission to the President of the United States. This scheme was found too complicated and expensive. Hence, the Military Governor of the Philippines promulgated a modified form of provisional government as General Orders No. 30[70] on July 22, 1899. The system of government, thereunder, provided for a civil governor and an advisory council of eight members to be elected by voters with property or educational qualifications, and judicial and departmental officials to be appointed by the Military Governor. The Military Governor was, however, left supreme, with command over the troops, with all authority not granted the Civil Governor, and with the right to veto any act of this official. Elections were held; civil government was duly organized November 6, 1899; general public affairs received attention. The experiment was abandoned in 1901 as too burdensome and pretentious.

a study of the native copy of the treaty in the vernacular shows that he must have been grossly deceived. Article I of the English version reads 'The sovereignty of the United States over the whole Archipelago of the Sulu and its dependencies is declared and acknowledged,' but a careful translation of the document from Sulu into English would be 'The support, aid, and protection of the Sulu Island and Archipelago are in the American nation'—a very different statement." Willis, Our Philippine Problem, pp. 87-89, Note.

[69] See Le Roy, The Americans in the Philippine, Vol. II, pp. 105-112; Harper's History of the War in the Philippines, p. 231; Otis's Report, 1899, pp. 122-128; Otis's Report, 1900, pp. 208, 213, 215; Reports, War Dept., 1899, 1900.

[70] Printed in the Off. Gaz. for Jan. 1, 1903, at p. 6; as exhibit V, Vol. 1, Report of the Philippine Commission, 1900; and in General Orders and Circulars, Military Governors, 1899, 1900.

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The order of the President, known to some as the "benevolent assimilation proclamation," [71] issued from the executive mansion on December 21, 1898, stating that the authority of the United States was to be "extended with all possible dispatch to the whole ceded territory," made known to the Filipinos by General Otis in more palatable form, was the order of the President having most effect during this period on the relations of the Filipinos and Americans. General Orders No. 58, regulating criminal procedure, and General Orders No. 68, concerning marriage, were the two laws of importance, promulgated by the Military Governor, and still in existence.[72]

Everything which was done by the Military Commander or the Military Governor was in pursuance of that absolute and supreme domain recognized by international law and American usage,[73] which, as to the Philippines, was reiterated emphatically by the President in his instructions of May 19, 1898, and in his Proclamation of December 21 of the same year. Such action by military authorities exists by virtue of the general power vested in the President of the United States as commander-in-chief of the military forces. The rule [74] is that military power, when exercised in a territory under military occupation, includes executive, judicial, and legislative authority.[75] During belligerent occupa-

[71] See Senate Document 331, pp. 776-78; Le Roy, The Americans in the Philippines, Vol. I, pp. 399-403; Blount, The American Occupation of the Philippines, Ch. VIII.

[72] Described in sec. 159 *infra*.

[73] New Orleans *v.* Steamship Co. (1874) 20 Wall. 394, 22 L. Ed. 358.

[74] See generally Magoon's Reports, pp. 11-36; U. S. *v.* Bull (1910) 15 Phil. 23; Op. Judge Advocate General, Sept. 30, 1909; Rowe, The United States and Porto Rico, pp. 22-28; Halleck's International Law, p. 776.

[75] Report of Secretary of War Root, 1901.

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tion, the power of the military commander flows directly from the laws of war, and is free from constitutional limitations on executive, legislative, and judicial powers.[76] On the cessation of military operations, the military commander is subject to certain rules of law, of which the most important is the principle of "immediate exigency" or "necessity."[77] "The authority of a military government during the period between the cession and the action of Congress, like the authority of the same government before the cession, is of large, though it may not be of unlimited, extent."[78] The treaty of peace does not affect the existence of military government; the powers of the Military Governor continue even after war has ceased through a period of readjustment to a subsequent date when Congress can act in its legislative capacity.[79] Yet the status of the military government does undergo some change, for while prior to the ratification of the treaty of peace the military is merely a substitute for a suspended or displaced sovereignty, after the ratification of the treaty, the military represents the new sovereignty and becomes a provisional civil authority. Its paramount purpose then becomes to create conditions which will merge into civil government. Notwithstanding the advantage of un-

[76] Fleming *v.* Page (1850) 9 How. 616, 13 L. Ed. 281; Cross *v.* Harrison (1853) 16 How. 164, 193, 14 L. Ed. 889, 901; Leitensdorfer *v.* Webb (1858) 20 How. 176, 177, 15 L. Ed. 891; *In re* Allen (1903) 2 Phil. 630.

[77] Raymond *v.* Thomas, 91 U. S. 712; Professor L. S. Rowe, XX Ann. Am. Acad. of Pol. and Soc. Sci., Sept., 1902, p. 9.

[78] Santiago *v.* Nogueras (1909) 214 U. S. 260, 53 L. Ed. 989, followed in Duarte *v.* Dade (1915) XIII O. G. 2006. See also Ochoa *v.* Hernandez (1913) 230 U. S. 139, 57 L. Ed. 1427.

[79] Cross *v.* Harrison (1853) 16 How. 164, 193, 14 L. Ed. 889, 901; Dooley *v.* U. S. (1901) 182 U. S. 222, 234, 45 L. Ed. 1074, 1082; Op. Judge Advocate Gen., Sept. 30, 1909; *In re* Allen (1903) 2 Phil. 630.

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hampered action which a military government enjoys, the disadvantages of the effect on the people make desirable the substitution of civil authority as soon as possible.

In the Philippines the Military Commander or Military Governor in conformity with these general rules first exercised all three powers. He voluntarily established and recognized a civil judiciary. He lost his legislative authority with the installation of the Philippine Commission on September 1, 1900. He gave up a portion of his executive authority with the inauguration of a Civil Governor on July 4, 1901. He relinquished all civil power (except as to the Moro Province continued until September, 1914) one year later.

Third Step—Investigation and Conciliation.

§ 70. The first Philippine Commission, familiarly styled "The Schurman Commission" from the name of its President, was composed of Jacob Gould Schurman, President of Cornell University, Major-General Elwell S. Otis, Military Governor of the Philippines, Rear-Admiral George Dewey, Commander of the Asiatic squadron, Charles Denby, former Minister to China, and Dean C. Worcester, a Professor of the University of Michigan, who had made two scientific expeditions to the Philippines. The civilian members assembled at Washington on January 18, 1899, and received the President's instructions.[80] The cause for the appointment of such a Commission, as indicated in these instructions, was the consummation of the treaty of peace and the necessity of extending the actual occupation throughout the Islands. To assist the President in carrying into effect a policy in regard to the Philippines, or in the words

[80] Printed as Exhibit II, Report, First Philippine Commission; and in Worcester, The Philippines and Present, Appendix, p. 975.

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of the President of the Commission "To aid the Government at Washington in shaping that policy, and to co-operate with the naval and military authorities at Manila in the effective extension of American sovereignty over the archipelago," were the principal functions which the President assigned to the Commission.[81] In the language of another member "We were sent to deliver a message of good-will, to investigate, and to recommend, and there our powers ended." [82]

The Commission reached Manila on March 4, 1899. It soon discovered "that the insurgents grossly misconceived the intentions of the United States in regard to the Philippines. To enlighten them and to win their confidence became, therefore, our primary aim." [83] At an opportune time, namely on April 4, "when the American Army was driving the Philippine Army before it" the Commission issued a proclamation to the people of the Philippine Islands in order "to exhibit beyond the possibility of misapprehension the liberal, friendly, and beneficent attitude of the United States to the people of the Philippine Islands." [84] In its conclusion, certain regulative principles of cardinal importance which were to guide the relations of the United States with the Filipino people, were outlined as follows:

"1. The supremacy of the United States must and will be enforced throughout every part of the Archipelago, and those who resist it can accomplish no end other than their own ruin.

[81] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the Members of Cornell University, pp. 1-8.

[82] Worcester, *supra,* Vol. I, pp. 301, 302.

[83] Schurman, *supra.*

[84] Schurman, *supra.* Proclamation printed in Report, First Philippine Commission, Vol. I, pp. 3-5 and in Worcester, The Philippines Past and Present, Vol. II, Appendix, p. 977.

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"2. The most ample liberty of self-government will be granted to the Philippine people which is reconcilable with the maintenance of a wise, just, stable, effective, and economical administration of public affairs, and compatible with the sovereign and international rights and obligations of the United States.

"3. The civil rights of the Philippine people will be guaranteed and protected to the fullest extent; religious freedom assured, and all persons shall have an equal standing before the law.

"4. Honor, justice, and friendship forbid the use of the Philippine people or Islands as an object or means of exploitation. The purpose of the American Government is the welfare and advancement of the Philippine people.

"5. There shall be guaranteed to the Philippine people an honest and effective civil service, in which, to the fullest extent practicable, natives shall be employed.

"6. The collection and application of taxes and revenues will be put upon a sound, honest, and economical basis. Public funds, raised justly and collected honestly, will be applied only in defraying the regular and proper expenses incurred by and for the establishment and maintenance of the Philippine government, and for such general improvements as public interests may demand. Local funds, collected for local purposes, shall not be diverted to other ends. With such a prudent and honest fiscal administration, it is believed that the needs of the government will in a short time become compatible with a considerable reduction in taxation.

"7. A pure, speedy, and effective administration of justice will be established, whereby the evils of delay, corruption, and exploitation will be effectually eradicated.

"8. The construction of roads, railroads and other means of communication and transportation, as well as other public works of manifest advantage to the Philippine people, will be promoted.

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"9. Domestic and foreign trade and commerce, agriculture, and other industrial pursuits, and the general development of the country in the interest of its inhabitants will be constant objects of solicitude and fostering care.

"10. Effective provision will be made for the establishment of elementary schools in which the children of the people shall be educated. Appropriate facilities will also be provided for higher education.

"11. Reforms in all departments of the government, in all branches of the public service, and in all corporations closely touching the common life of the people must be undertaken without delay and effected, conformably to right and justice, in a way that will satisfy the well-founded demands and the highest sentiments and aspirations of the Philippine people."

The Commission reported that this proclamation "had a wide and continuing influence." [85]

The Commission spent its remaining time in hearing witnesses of various nationalities and from all classes. Emissaries from the Revolutionary Government also sought interviews.

The Commission was recalled in September. It made a preliminary report of a few pages on November 2,[86] and later, on January 31, 1900, a final report of four volumes, which the President transmitted to Congress. This report was comprehensive and contained valuable information on Philippine history, institutions, and conditions. It earnestly recommended [87] a territorial form

[85] Report, p. 6.

[86] Printed as Exhibit I, Vol. I, p. 169 of final report.

[87] In connection with the subject of government the Commission reached the following conclusions:

"1. The United States can not withdraw from the Philippines.

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of government of the first class, following the Jeffersonian scheme of government for Louisiana, with an elected lower house and an upper house, half elected and half nominated.

We are there and duty binds us to remain. There is no escape from our responsibility to the Filipinos and to mankind for the government of the Archipelago and the amelioration of the condition of its inhabitants.

"2. The Filipinos are wholly unprepared for independence, and if independence were given to them they could not maintain it.

"3. As to Aguinaldo's claim that he was promised independence or that an alliance was made with him, Admiral Dewey makes the following communication to the Commission:

"The statement of Emilio Aguinaldo, under date of September 23, published in the Springfield Republican, so far as it relates to reported conversations with me, or actions of mine, is a tissue of falsehoods. I never, directly or indirectly, promised the Filipinos independence. I never received Aguinaldo with military honors, or recognized or saluted the so-called Filipino flag. I never considered him as an ally, although I did make use of him and the natives to assist me in my operations against the Spaniards.'

"4. There being no Philippine nation, but only a collection of different peoples, there is no general public opinion in the Archipelago; but the men of property and education, who alone interest themselves in public affairs, in general recognize as indispensable American authority, guidance, and protection.

"5. Congress should, at the earliest practicable time, provide for the Philippines the form of government herein recommended or another equally liberal and beneficent.

"6. Pending any action on the part of Congress, the Commission recommends that the President put in operation this scheme of civil government in such parts of the Archipelago as are at peace.

"7. So far as the finances of the Philippines permit, public education should be promptly established, and when established made free to all.

"8. The greatest care should be taken in the selection of officials for administration. They should be men of the highest character and fitness, and partisan politics should be entirely separated from the government of the Philippines." (Vol. I, p. 121.)

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Fourth Step—Filipino Co-operation.

§ 71. The Federal Party[88] should be considered here rather than later with political parties because more a temporary and useful phase of American reconstruction under Filipino auspices than a mere political organization.

The conciliatory proclamation of the Schurman Commission enabled conservative Filipinos favoring peace and acknowledgment of American sovereignty to form a party known as "Autonomists,"[89] finding its counterpart in name and principles in Porto Rico in 1898. On December 23, 1900, the movement took definite form, under the name "the Federal Party" at a meeting presided over by Mr. Florentino Torres, and attended by such prominent Filipinos as Messrs. Tavera, Buencamino, Ner, Arguelles, Dancel, Fabie, Yangco, and Arellano; and Dr. Frank S. Bourns. Their purpose in the words of the prime mover, Dr. T. H. Pardo de Tavera, was "to constitute a party which, accepting American sovereignty, could bring about peace and permit the Filipinos under those conditions to petition the United States for such rights and privileges as they might desire, by the employment of lawful means."[90] A manifesto was read and a platform was adopted.

[88] See A History of the Federal Party, by T. H. Pardo de Tavera, Report, Philippine Commission, 1901, Vol. I, Appendix A, pp. 161-165.

[89] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the Members of Cornell University, pp. 8-10, quoting a letter of Justice Torres to General McArthur; Annual Report of the War Department, 1901, Part II, pp. 120, 121; Rowe, The United States and Porto Rico, pp. 244, 247.

[90] Letter to Maj. Gen. Arthur MacArthur, Miltary Governor in the Philippines, Manila, P. I., May 14, 1901, Congressional Record, Vol. 35, Part II, pp. 1655, 1656. "The main object of this organization was to bring about peace in the islands and to co-operate with the commission, of which the Hon. William H. Taft was presi-

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Delegates were sent into the provinces to organize auxiliary committees. In a few months the Federal Party numbered 150,000. Excepting an abortive peace movement under the name "Partido Conservador," [91] the Federal Party remained the only party of the reconstruction period.

In its initial object, to bring about peace under the sovereignty of the United States, the party co-operated with the Second Philippine Commission with valuable results. Mr. Worcester, a member of the Commission at that time, has stated that "the establishment of civil government throughout so large a proportion of the provinces in the Islands would have been impossible at this time had it not been for the helpful activities of the Federal Party. . . . They convinced many of the common people of the true purposes of the American government, and in numerous other ways rendered invaluable services." [92] Later, the platform of the party was expanded to include a plank asking for territorial government with representation in Congress, leading finally to statehood.[93] Yet even from the beginning there were those in the party who, while joining because op-

dent." T. H. Pardo de Tavera in Census of the Philippine Islands, 1903, Vol. I, p. 388. "It was organized to secure peace for this country under the sovereignty of the United States." Report, Philippine Commission, 1901, Vol. I, p. 7.

[91] The Manila American, for February 26, 1901, describes this movement; The Philippine Problem, September 15, 1901, first series, p. 71, foot-note.

[92] Worcester, The Philippines Past and Present, Vol. I, pp. 334, 341.

[93] Report, Philippine Commission, 1901, Vol. I, p. 164. "FEDERAL PARTY—MESSAGE TO THE CONGRESS OF THE UNITED STATES OF AMERICA ACCORDED IN EXTRAORDINARY ASSEMBLY, NOVEMBER, 1901, MANILA.

"To the Congress of the United States:

"The Federal Party, assembled in extraordinary convention,

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posed to war, did so, without abandoning a desire to obtain independence by peaceful propaganda. This idea is well presented by the active head of the *Progresista* Party, the successor of the Federal Party—"At the be-

called pursuant to its by-laws, resolved under this date to transmit to the Congress of the United States a memorial of the tenor following. . . .

FIRST PART—PETITION FOR ANNEXATION AND FORM OF GOVERNMENT.

"The Federal Party has made an exhaustive study of the sentiments of the Filipino people, as well as those animating the American people, with respect to determining the future of these Islands.

"From the mass of data which the Federal Party has had before it, and seriously and formally considered, it is clearly deduced that the intention of the Americans and Filipinos is to constitutionally join the Philippines to America in such a way that the former may never be separated from the latter, nor the latter disunited from the former. . . .

"To make of the Philippines a colony of the United States or to grant independence to the Philippines would be to hand the Islands over to disorder and to anarchy, to destruction and chaos.

"In effect the colonial system involves the principles of difference of citizenship, inequality of rights, and other consequent abuses and injustices, of all of which we Filipinos were surfeited under the Spanish government, and for this reason we reject everything which tends toward a colony.

"Philippine independence, with or without a protectorate, means the holding of power by all the terrible elements of the sects which predominate, and would predominate still for some years, until the anger of the Filipinos toward Filipinos shall have been completely calmed, education become more general, and the fanaticism we have inherited from Spain exiled.

"Federation or annexation would settle all these difficulties by concentrating the interests of the Filipino people upon education and labor, the most efficient means for bringing about a prompt uplifting.

"The Federal Party can assure the Congress that the foregoing is the true opinion of the best elements and greater part of the Filipinos, as is evidenced by the annexed report of the Federal Party, which was made by direction of General MacArthur, and which has all the character of an official document.

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ginning, the Federal Party was partly composed of those who had taken part in the revolution, but who were then sincerely in favor of peace, of the adoption of a government upon the American plan, and of a process of evolution in order to bring this all happily about. Others came into the party when they became convinced of the intention of the United States to retain the islands, and they cherished for a time the hope of forming a part of the American Union, believing in good faith that, having lost the hope of independence, the best opportunity for the Filipinos was to enjoy the same rights as are enjoyed by the citizens of the Republic that had come to assume sovereignty over the country. Many others, and these formed the majority, when they saw that the war was both useless and prejudicial, and that to compel the United States to grant independence was not feasible, proposed to themselves first of all to work with the Federal Party for the pacification of the country, but without abandoning the idea of attaining inde-

"In behalf, then, of the Federal Party, this convention has the honor to very respectfully present to the Congress the following petition praying a declaration by the Congress of the United States to the effect that the Philippine Islands as they are described in the Treaty of Paris and subsequent conventions with Spain, are an integral part of the Republic of the United States of America, the said Philippine Islands constituting a territory with the rights and privileges which the Constitution of the United States grants to the other territories, such as that of becoming eventually a state of the Union.

"Therefore the Federal Party proposes the following form of territorial government. . . .

"In this second part the Federal Party suggests to the Congress the fulfillment of other great aspirations of the country of a social and economical character by recommending the adoption of adequate measures within the sovereign attributes of the Congress. . . .

"Manila, November 9, 1901." Vol. 35, Part II, Congressional Record, pp. 1653-1655.

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pendence later on, by peaceable means and by appealing to the sense of justice of the American people." [94] Such differences finally led to internal divisions and final dissolution.

Fifth Step—Quasi-Civil Government Begun.

§ 72. The second Philippine Commission.[95]—By the time the first Philippine Commission had completed its work, conditions in the Philippines had so far improved that the President believed that civil government could be initiated. With this end in view, a new Commission was appointed on March 16, 1900, composed of William H. Taft, President, and Dean C. Worcester, Luke E. Wright, Henry C. Ide, and Bernard Moses, members. Only one, Mr. Worcester, had been a member of the first Commission. In contrast with the former Commission, all were civilians; in contrast also, the new Commission was to be not an advisory body, but a civil agency with ample powers.

Authority for the creation of the Commission was found in an analysis of the military power of the President. In the analytical language of Elihu Root, then Secretary of War, "The question presented was how in the exercise of the President's military power under the

[94] Juan Sumulong, The Philippine Problem from a Filipino Standpoint, 178 No. Am. Rev. 1904, pp. 865, 866. "It was their devise in a roundabout way to secure immediate Philippine independence, if not absolutely, at least in large measure, and especially in the shape of immunity from the arbitrary and unlimited powers of Congress, of which they stood in dread." Jacob Gould Schurman, President of the First Philippine Commission, *supra.*

[95] See generally Report of the Commission, Nov. 30, 1900: Report 1901, 2 Vols.; Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305; Williams, The Odyssey of the Philippine Commission; Worcester, The Philippines Past and Present, pp. 325 *et seq.;* Le Roy, The Americans in the Philippines, Vol II, pp. 275 *et seq.*

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Constitution to give the peaceful people of the Philippines the real benefit of civil government. The question was answered by an analysis of the military power, which, when exercised in a territory under military occupation, includes the executive, judicial and legislative authority. . . . It was, accordingly, determined that as the fundamental step of giving the substance of civil government to the people of the Philippines there should be a separation of these powers so that the executive, the legislative and the judicial powers should be exercised by different persons throughout the classified territory, and as it is well settled that the military power of the President in occupied territory may be exercised through civil agents as well as military officers, it was determined that that part of the military power which was legislative in its character should be exercised by civil agents proceeding in accordance with legislative forms, while the judicial power should be exercised by particular establishments and regulated by the enactments of legislative authority." [96]

For the guidance of the Commission, the President issued Instructions [97] on April 7, 1900, said to have been prepared by Mr. Root. This State paper has been characterized by eminent authorities [98] as "the Magna Charta of the Philippines;" "the most nearly perfect

[96] See also testimony of Civil Governor Taft before the Committee on Insular Affairs, 1902, p. 75.

[97] Printed in the annual message of President McKinley to Congress on December 3, 1900; Compilation of the Acts of the Philippine Commission; Vol. I, Philippine Laws, etc. Mr. Taft is authority for the statement that the Instructions were drawn by Mr. Root. 1 Off. Gaz., Dec. 23, 1903, Supplement.

[98] Le Roy, The Americans in the Philippines, Vol. II, p. 278; Forbes-Lindsay, America's Insular Possessions, Vol. II, pp. 205, 206; Willoughby, Territories and Dependencies of the United States, p. 179; McKinley, Island Possessions of the United States, p. 243, etc.

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example of organic law, jurisprudence, guarding of rights, distribution of powers, administrative provisions, checks and balances, civilization ever beheld in a single document;" "in the documentary history of the government of dependent territories by the United States it will always occupy a leading place side by side with that of the Northwest Ordinance. Its significance lies in the fact that in its few pages is formulated, in the most authoritative way, the whole theory of the American people in respect to the government of dependencies;" "probably no more reasonable and charitable basis for colonial government is to be found in the history of modern colonization." The writer would join with his meed of appreciation for this remarkable state paper which gave the Philippines all the best and basic of enlightened Anglo-Saxon jurisprudence—a worthy rival of the Laws of the Indies. By the Instructions, the powers of the Commission were to be that part of the military power of the President in the Philippines, which was legislative in character, with certain executive functions, including the right to make appointments. In its conclusion, after recalling that the pledge made in the articles of capitulation of the city of Manila had been fully kept, the President said: "As high and sacred an obligation rests upon the Government of the United States to give protection for property and life, civil and religious freedom, and wise, firm, and unselfish guidance in the paths of peace and prosperity to all the people of the Philippine Islands. I charge this Commission to labor for the full performance of this obligation, which concerns the honor and conscience of their country, in the firm hope that through their labors all the inhabitants of the Philippine Islands may come to look back with gratitude to the day when God gave victory to American arms at Manila and set their land under the sovereignty and protection of the people of the United States."

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The Commission, upon its arrival in Manila on June 3, only issued an informal announcement of its purposes to the public press.[99] In conformity with the President's Instructions, the Commission spent the time until September 1 in investigating conditions. On this date it began its legislative and executive duties. A simple announcement [100] was issued, quoting certain clauses of its instructions and stating that the fullest opportunity for public consideration and criticism of proposed measures would be granted. This policy, according to the President of the Commission, "furnished to the Filipinos ocular demonstration of what, if peace followed, might be expected in the way of civil government." [101] The sessions of the Commission were, consequently, stated, and public. Legislative forms were followed. "It adopted the policy of passing no laws, except in cases of emergency, without publishing them in the daily press, nor until after they had passed a second hearing and the public had been given an opportunity to come before the Commission and suggest objections or amendments to the bills. Before enacting them they were submitted to the Military Governor for his consideration and comment." [102]

From September 1, 1900, to July 4, 1901, the Commanding General of the Army remained as civil executive as well. The President of the Commission has stated that "This was a good arrangement, because it kept up the interest of the military branch in the development of the municipal governments until many could stand alone, and it enabled the Commission to secure

[99] See Report of Commission of November 30, 1900, Exhibit A.
[100] *Id.*, Exhibit B.
[101] Statement of William H. Taft, Hearings before the Committee on Insular Affairs, p. 6.
[102] Taylor, 18 HS, cited by Worcester, The Philippines Past and Present, Vol. I, p. 334.

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through the Executive, during the transition from a military to a civil régimé, the assistance of the army."[103]

During this period, the Commission accomplished much valuable work. In a legislative way, the first law[104] passed was an appropriation of $2,000,000 Mexican for the construction and repair of highways and bridges. The second Act began the survey for a route into Baguio. Then followed important laws[105] providing for—the organization of a civil service on the basis of merit;[106] the order of procedure in the enactment of laws;[107] the

[103] William H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in The Philippines, p. 35.

[104] "We were impressed with the fundamental necessity of promptly opening up lines of land communication in a country which almost completely lacked them, and there were many poor people in dire need of employment who would be relieved by the opportunity to earn an honest living which the inauguration of road construction would afford them. Our second act appropriated $5,000 Mexican for the purpose of making a survey to ascertain the most advantageous route for a railroad into the mountains of Benguet, where we wished to establish a much-needed health resort for the people of the Archipelago." Worcester, The Philippines, Past and Present, Vol. I, p. 332. See also Williams, The Odyssey of the Philippine Commission, p. 90.

[105] See generally William H. Taft, *id.*

[106] No. 5. "The fifth law which was enacted by the Commission was the civil service law, which is believed to extend the merit system further than it has ever been extended in this country. It is an indispensable condition precedent to any proper civil government in the Islands." William H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in The Philippines, p. 36; see further Report of the Commission, Nov. 30, 1900, pp. 20-23; and Gazetteer of the Philippine Islands, p. 159.

[107] No. 6. "All of this elaborate mechanism is completely vitiated by the second section of the act:

"'The order of procedure herein provided shall not be obligatory whenever the Commission shall determine that the public good requires the more speedy enactment of law.'" Willis, Our Philippine Problem, pp. 42, 43.

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government of Benguet;[108] the schools;[109] a Municipal Code;[110] a provincial government Act; the organization of the judiciary; and a Board of Health.[111] In an executive way, administrative bureaus were created or reorganized. Of even more effect was the fact that "The Commission reached the conclusion that it would aid in the pacification of the country; would make the members

[108] Nos. 48, 49. "It has fallen to the Igorotes of Benguet to be the first of the island people to receive civil government. Two acts have been passed, one extending a form of civil government to the townships and the other to the province." Williams, The Odyssey of the Philippine Commission, pp. 119, 120.

[109] No. 74. "The present school system in the Philippines was organized under the direction of Dr. Fred W. Atkinson, who assumed the position of general superintendent of public instruction September 1, 1900. He drafted the first act providing for a general system of public instruction in the Philippines, which was passed, with a few modifications, as Act 74 of January 21, 1901, amended by Acts 477 and 525 of 1902. It constitutes the organic school law of the Islands at present." Prescott F. Jernegan, Census of the Philippine Islands, 1903, Vol. III, p. 641; see further Gazetteer of the Philippine Islands, p. 160.

[110] No. 82. "The Municipal Code makes the government of the towns practically autonomous. While it was the aim to keep the law simple, it was found necessary to specify in considerable detail the powers and limitations of the different municipal officers. Under Spanish administration a public official may have been responsible to those above, but seldom or never to those beneath him. Saturated as the people are, therefore, with the idea that any demand made by a person in authority must be obeyed, the present law lays stress upon the fact that the government now sought to be implanted is one of limited and prescribed powers, and that public officials have no rights beyond those expressly conferred upon them." Williams, *id.*, p. 140. See Report, November 30, 1900, pp. 37-44.

[111] No. 157. "There was promptly created an efficient board of health made up of men of recognized ability and large practical experience." Worcester, The Philippines Past and Present, Vol. I, p. 413. See further Gazetteer of the Philippine Islands, pp. 160, 161; Report of Commission, 1901, Vol. I, p. 52.

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of that body very much better acquainted with the country, with the people, and with the local conditions, and would help to educate the people in American methods, if the Commission went to the capital of each province and there passed the special act necessary to create the provincial government and made the appointments at that time. Accordingly, the Commission visited thirty-three provinces. The first province was Pampanga, which it visited on the 13th of February, 1901, and then followed the visits to the other provinces." [112] Arrange-

[112] Report, Philippine Commission, 1901, Vol. I, pp. 10, 30, 31. See further William H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in The Philippines, pp. 42, 43; Inaugural Address of William H. Taft, as Civil Governor, App. D. Report, Philippine Commission, 1901, Vol II, p. 282 and in Taft, Present Day Problems, pp. 1-10; Williams, The Odyssey of the Philippine Commission, Chs. IX-XIII. "Now, I am not sure that I stated what the course of the Commission was in the holding of the meetings, and at the risk of reiteration I will say that in advance of our coming the military district commander was advised of the date when we should arrive, and was requested to notify the principales, the cabezas de barangay, and municipal councilors of every town in the province that we would meet them in the capital. The principales are the prominent men, the men of wealth and of education in the town. There is a distinct class of them; they are recognized. The cabezas de barangay are the head men. The term means literally 'head of the boat crew,' meaning the man in the head of the boat, and the cabeza de barangay was the man who controlled the boat; but it came subsequently to mean the man who was at the head of affairs in a place. There was no special election by the people to select representatives to meet us, but in the way described the educated leaders of the towns came and discussed with us the needs of the province and towns and the legislation to be adopted.

"When we reached the capital, we first had an interview with the military commander, and asked him the condition of the district with reference to pacification, and asked him also about the prominent natives and the persons whom it might be well to appoint to offices, so far as he knew them. In some instances we found that the military commander had been there so long and had

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ments for the formation of local governments [113] were made at the same time. The two-fold distribution of governmental powers under the Spanish rule was thus maintained, but with a vast reduction of provincial divisions, and eventually, of municipalities.

Considering the chaotic conditions existing in the Philippines, as a result of war, the friction due to insurrection, the disorganized machinery of government, and

taken so much interest in the people and their government and their pacification and development that he could give us a great deal of valuable information. On the other hand, there were some who had been so short a time there, by reason of the change of posts, that they did not know even as much as we did. However, we got from the military officer what knowledge he had, and then we proceeded to the town hall, or the largest room in the place, and called the roll of the towns to see who were there to represent the towns, and the names of those present at each meeting will be found in the addendum to our report, volume 2.

"After calling the roll, the president of the Commission made a statement of the general provincial law, and invited discussion by the delegates present as to what the form of special law should be which it was necessary to pass in order to make the general provincial law applicable. That involved the settlement of the question as to where the capital should be, what the salaries of the provincial officers should be, and what additional special provisions of law were necessary in view of the local conditions. It also involved frequently a general discussion as to the provisions of the provincial law, and we always, I think without exception, cross-examined the speakers as to the conditions prevailing in that province, the condition of agriculture, and the wages, and the condition of public buildings and public roads." Statement of William H. Taft, before the Committee on Insular Affairs, 1902, pp. 25, 26. See also pp. 7-26, 67 *id.*

[113] "The policy adopted in most instances was to establish a provincial government and appoint one of the provincial officers, usually the governor, chairman of organization committees for the several municipalities, so that the work might proceed as rapidly as possible. In some few instances persons other than provincial officers were selected on account of their special fitness for the work." Report, Philippine Commission, 1901, Vol. I, pp. 30, 31.

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the grave problems to be solved, the splendid way in which the Commission performed its task merits the approval of all.[114] Judge Williams, the Secretary of the Commission, writing contemporaneously of the first year's work of the Commission, has said:

"The work has been hard and continuous now for over a year, the Commission having taken active charge September first, 1900. It is difficult to estimate what has been done in that time and is now doing. In legislative work alone some two hundred and forty-eight laws have been passed, most of them having to be shaped to meet new and untried conditions. A new government is being created from the ground up, piece being added to piece as the days and weeks go by. It is an interesting phenomenon, this thing of building a modern commonwealth on a foundation of medievalism—the giving to this country at one fell swoop all the innovations and discoveries which have marked centuries of Anglo-Saxon push and energy. I doubt if in the world's history anything similar has been attempted; that is, the transplanting so rapidly of the ideas and improvements of one civilization upon another. The whole fabric is being made over; scarcely anything is left as it was." [115]

Sixth Step—Change from presidential (military) to congressional (civil) government.

§ 73. The Spooner amendment, taking its name from Senator John C. Spooner of Wisconsin, was an amendment to the Act making appropriations for the

[114] "The work of this memorable Commission will stand as one of the most striking events in American history." Barrows, A Decade of American Government in the Philippines, p. XII.

[115] Williams, The Odyssey of the Philippine Commission, pp. 320, 321. See also Worcester, The Philippines Past and Present, Vol. I, pp. 345, 346.

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Army, approved on March 2, 1901. Following in part the language of the Act of October 31, 1803, vesting the government of Louisiana in President Jefferson, but with a more arbitrary grant of power,[116] Congress provided that "All military, civil, and judicial powers necessary to govern the Philippine Islands, . . . shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said Islands in the free enjoyment of their liberty, property, and religion." [117] There were also provisions concerning franchises and the sale or lease of public land, designed to safeguard Filipino interests.[118] No change was thus made in the organization of the Philippine Government, nor was any diminution of the powers of the President and his agents, except as to franchises, affected. The President still retained a very broad discretion, in connection with the establishment and maintenance of government in the Philippines.

What then was the purpose? Merely to prevent any question as to the legality of prior action being raised, to change the Philippine Government from a presidential to a congressional basis, to separate military and civil powers, and to have a civil and statutory foundation rather than a military and implied one.[119] The ground taken

[116] John Holladay Latané, America as a World Power, 1897-1907, p. 158.

[117] 31 Stat. at L., 895.

[118] See Congressional Record, Fifty-sixth Congress, Second Session, pp. 3262, 3385, 3493, 3522.

[119] Willoughby, The American Constitutional System, p. 210; Willoughby, Territories and Dependencies of the United States, pp. 181. 182; McKinley, Island Possessions of the United States, p. 250.

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by its advocates is indicated in the following extract from a speech by Hon. Henry Cabot Lodge in the Senate:

"The President, under the military power, which still controls and must for some time control the Islands, could do all that this bill provides. But it is well that he should have the direct authorization of Congress, and be enabled to meet any emergency that may arise with the sanction of the law-making power, until that power shall decree otherwise. Above all, it is important that Congress should assert its authority; that we should not leave the executive acting with the unlimited authority of the war power to go alone after the conclusion of peace, but that he should proceed under the authority of Congress in whatever he does until Congress shall otherwise more specifically provide. By this bill we follow the well-settled American precedents of Jefferson and Monroe, which were used still later in the case of Hawaii. To leave the war power unrestrained after the end of the war, as was done in the case of California and New Mexico, is to abdicate our own authority. This bill is the assertion of Congressional authority and of the legislative power of the government."

The President would thereafter act as President of the United States and not as commander-in-chief of the military forces. The Philippine Government would thereafter, in most respects, be a civil instead of a military one. The power of Congress to authorize a temporary government of this character has been frequently exercised and is not open to question.[120]

Seventh Step—Civil Government Established.

§ 74. Civil Governor inaugurated.—The order of the President dated June 21, 1901, appointed William

[120] De Lima *v.* Bidwell (1901) 182 U. S. 1, 196, 45 L. Ed. 1041, 1056; Dorr *v.* U. S. (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706.

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H. Taft, the President of the Commission, as the first Civil Governor of the Philippine Islands. He was inaugurated into office with simple and impressive ceremonies on the fourth of July following.[121] In the exact language of his inaugural address, "This ceremony marks a new *step* toward civil government in the Philippine Islands. . . . The transfer to the Commission of the legislative power and certain executive functions in civil affairs under the military government on September first of last year, and now the transfer of civil executive power in the pacified provinces to a Civil Governor, are successive stages in a clearly formulated plan for making the territory of these Islands ripe for permanent civil government on a more or less popular basis." [122] In other words, the Civil Governor exercised control over the provinces where civil government had been established; the Military Governor continued in charge of the remaining provinces, until transferred to civil authority.

§ 75. Civil organization completed.—The President terminated the office of Military Governor and relieved the general commanding the Division of the Philippines from the further performance of the duties of the office by an order of July 3, 1902. Friction between the two jurisdictions was thereby made impossible. The Civil Governor, whose title has subsequently, by an Act of Congress of February 6, 1905, been changed to Governor-General, became in all respects the Chief Executive of the Philippine Islands.

Under the Chief Executive, the Insular organization was completed by an Order of the President effective September 1, 1901, making the four members of the

[121] Williams, The Odyssey of the Philippine Commission, pp. 280-283.

[122] See Inaugural Address of William H. Taft as Civil Governor, Report, Philippine Commission, 1901, Vol. II, App. D., p. 281; also appearing in Taft, Present Day Problems, pp. 1-10.

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Commission, heads of four Executive Departments.[123] Act 222 enacted a few days later segregated the Bureaus into these departments or under the Civil Governor. One of these Secretaries of Departments was designated Vice-Governor on October 29, 1901—a position which has remained.

The Philippine Commission, after the installation of a Civil Governor, was the sole legislative body for the Islands until the inauguration of the Philippine Assembly on October 16, 1907, when it shared with the latter, legislative jurisdiction over the so-called Christian provinces. The Civil Governor continued as President of the Commission. The order going into effect on September 1, 1901, the purport of which was known at the time of the induction of the Civil Governor into office, added three Filipino members without portfolios to the Commission. Except for the addition of one more Filipino member on July 6, 1908, the organization of the Commission remained unchanged.

The Philippine Bill, the Act of Congress of July 1, 1902, approved and ratified the previous action of the President. It adopted the system which was in operation with specification in some respects. Various other Acts of Congress and Acts of the Philippine Legislature and Commission have amplified the organic law.

By the time the first Civil Governor was ready to leave the Islands in 1904 a stable and representative civil government was established.

Eighth Step[124]*—Extension of Popular Self-Government.*

§ 76. Filipino participation.—The Philippine Commission in its first formal report said: "The theory upon

[123] See Report, Philippine Commission, 1901, Vol. I, pp. 16–18.

[124] It can now be seen why the word "Step" was used. *E. g.*, "Under him (Governor Taft) the Islanders are now taking the

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which the commission is proceeding is that the only possible method of instructing the Filipino people in methods of free institutions and self-government is to make a government partly of Americans and partly of Filipinos, giving the Americans the ultimate control for some time to come." [125] It evolved into a policy favoring a government of Filipinos assisted by Americans. This seems to have been the consistent policy of the United States.

Beginning with the lowest division, the Orders of the Military Governor and the early Acts of the Commission gave local autonomy. Not until 1916 did the city of Manila get nearly absolute home rule with an elective

first *steps* along the hard path which ultimately leads to self-respect and self-government." (President Roosevelt, The First Civil Governor, Outlook, 1901, printed in The Philippines, pp. 23, 24.) "We are constantly increasing the measure of liberty accorded the Islanders, and next spring, if conditions warrant, we shall take a *great stride* forward in testing their capacity for self-government by summoning the first Filipino legislative assembly." (President Roosevelt, Message of 1906.) "Gentlemen of the Assembly: President Roosevelt has sent me to convey to you and the Filipino people his congratulations upon another *step* in the enlargement of popular self-government in these Islands." (Address of Secretary of War Taft at the Inauguration of the Philippine Assembly, printed in Present Day Problems by Mr. Taft, p. 11.) "The national Philippine policy contemplates a gradual extension of popular control, *e.g.*, by *steps*." (Special Report of William H. Taft, Secretary of War, to the President on the Philippines, p. 8.) "The President outlined certain action which he, as the Executive, might take. The Jones Bill now embodies, looking in the same direction, certain forward *steps* which may only be taken by Congress. The *steps* in advance granting power to the Filipino people embodied in the bill are the following:" (Statement of Secretary Garrison on the Jones Bill, printed in "The Filipino People," July, 1914, p. 8.) "*Step by step* we should extend and perfect the system of self-government in the Islands, making test of them and modifying them as experience discloses their success and their failure." (Message of President Wilson, December 2, 1913.)

[125] Report, Philippine Commission, 1901, Vol. I, p. 19.

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council and an appointive Mayor. The same result was attained in the next higher unit, the provincial government, by the indirect election of governors, made more nearly absolute by the direct election of governors and third members in 1907, the election of a municipal president as a member of the provincial board in place of the provincial treasurer in 1915, and now the election of the provincial governors and the two "vocales" of the Provincial Board. With the enactment of the organic law for the Department of Mindanao and Sulu, Filipino and Moro self-government took a long step forward. Of course, the foregoing statements do not take into account certain appointive positions or the situation which long existed in the Non-Christian Provinces and the Moro Province.

In the central government, Filipinization began with the appointment of Filipino judges in 1901, including the Chief Justice and two Justices of the Supreme Court, and of three Filipino members to the Commission in September, 1901. Another member was added later, but still leaving the ratio five to four. In 1913 a majority of Filipinos in the Commission were appointed. Appointments of numerous Filipinos in the executive and judicial branches have been made.

The most significant of all the moves looking to Filipino self-government was the institution in 1907 of the Philippine Assembly, dividing legislative authority with the Philippine Commission.[126] An Assembly had been recommended by the two Philippine Commissions and by

[126] See generally Report, Chief Bureau of Insular Affairs, Oct. 31, 1907; Report of the Philippine Commission, 1907, Part I; Commission Journal, 1907; *Diario de Sesiones de Asamblea Filipina,* 1907; Gregorio Nieva (Secretary, First Philippine Assembly, Member, Second Philippine Assembly), The Philippine Assembly, in Builders of a Nation, pp. 73 *et seq.;* Kalaw, The Case for the Filipinos, Ch. VII.

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Civil Governor Taft.[127] The Philippine Bill (sections 6, 7) prescribed the following conditions to the calling of an Assembly: 1. General and complete peace. 2. A census. 3. An interval of two years after the census with continuation of peaceful conditions. The Philippine Commission certified to the President on September 18, 1902, that the insurrection had ceased. The census was completed and published on March 28, 1905. Due proclamation of this fact with announcement of future action was made by the Chief Executive. The Philippine Commission again certified to the President on March 28, 1907, that a condition of general and complete peace had continued for two years following the publication of the census.[128] The President thereupon issued an Executive Order calling a general election.[129] The Phil-

[127] "I can well remember when that section (sec. 7, Philippine Bill) was drafted in the private office of Mr. Root in his house in Washington. Only he and I were present. I urged the wisdom of the concession and he yielded to my arguments and the section as then drafted differed but little from the form it has to-day. It was embodied in a bill presented to the House and passed by the House, was considered by the Senate, was stricken out in the Senate, and was only restored after a conference, the Senators in the conference consenting to its insertion with great reluctance. I had urged its adoption upon both committees, and, as the then Governor of the Islands, had to assume a responsibility as guarantor in respect to it which I have never sought to disavow. I believe that it is a *step* and a logical *step* in the carrying out of the policy announced by President McKinley and that it is not too radical in the interest of the people of the Philippine Islands. Its effect is to give to a representative body of the Filipinos a right to initiate legislation, to modify, amend, shape or defeat legislation proposed by the Commission." Address of Secretary of War Taft at the Inauguration of the Philippine Assembly, printed in Present Day Problems by Mr. Taft, pp. 35, 36.

[128] Appears in Report of the Philippine Commission, 1907, Part I, pp. 47, 48, and in the Journal of the Commission, Vol. I, pp. 8, 9.

[129] Appears in Vol. 6, Public Laws, pp. 524-529.

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ippine Commission enacted an Election Law (Act 1582) and passed a suitable resolution directing the Governor-General to announce the election for July 30—by a coincidence the same day of the month as that on which the first legislative body in America, the House of Burgesses, met in the year 1619. Delegates were elected from the eighty districts into which the provinces entitled to representation were divided—"the territory of said Islands not inhabited by Moros or other non-Christians." The result was the election of 32 *Nacionalistas,* 20 *Independientes,* 16 *Progresistas, 7 Immediatistas,* 4 *Independientes,* and 1 *Catolico.*[130] The first Philippine Assembly convened on October 16, 1907, at the Grand Opera House in the city of Manila.[131] The appropriate provisions of the laws, resolutions, and orders were duly read. The Secretary of War, William H. Taft, delivered an address and formally declared the Assembly open for the transaction of business. Oaths were administered to the members. The rules of the Congress of the United States were adopted.[132] The Assembly organized by electing Sergio Osmeña as the first Speaker.[133]

[130] Special Report of William H. Taft, Secretary of War, to the President on the Philippines, p. 45.

[131] The Journal of the Commission gives an official account of the inauguration of the First Philippine Assembly. The proclamation of the Governor-General naming the place of meeting appears in Vol. 6, Public Laws, pp. 531, 532. See Lobingrer, The First Filipino Assembly and its Work, 188 No. Am. Rev., Oct., 1908, p. 520.

[132] "The members of the Assembly, in order to overcome the natural difficulties attendant upon a new organization, were compelled to adopt the rules of some other legislative chamber, and did so, not haphazard but deliberately, selecting the rules of the House of Representatives of the United States. In doing so, they took into account the fact that at that time the majority of the Commission, the other legislative house, was composed of Americans, who were naturally more accustomed to the methods of their own Congress than to those of any other nation, and, chiefly, they

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Ninth Step—Autonomy.

§ 77. The Jones Bill.—The Philippine Autonomy Act, quite generally spoken of as the Jones Bill, as passed by Congress on August 29, 1916, provides for two most important matters—present autonomy for the Filipino people and future independence for them. The first is granted with an extension of jurisdiction to the Philippine Assembly (but hereafter to be known as "the House of Representatives") and Legislature to cover all the Islands and with larger powers for the Legislature; with a Senate elected by popular vote except two members, to take the place of the appointive Commission; with an extension of the suffrage; with an increased Filipinization in the executive departments possible through appointments by the Governor-General and confirmation by a Filipino Senate, and with practically all power in the hands of the Filipinos, with the exception of a few officials appointed from Washington. In the language of the Act, "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 the final analysis, there is, generally, Filipino municipal government, Filipino provincial government, a Filipino Legislature, Filipino representation in Congress, and many more Filipinos than Americans in execu-

took into account that, in the end, the American people and no other would be the judge of the success or failure of said Assembly which was being established as the touchstone of the capacity of the Filipino people to make their own laws." Commissioner Singson, The Filipino Legislator; His Difficulties and Successes, I Philippine Law Journal, August, 1914, pp. 12, 13.

[188] It is appropriate to note that in an address at San Miguel de Mayumo, Bulacan, on May 7, 1910, Speaker Osmeña, speaking of the Philippine Assembly, said: "The establishment of the Philippine

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tive and judicial positions.[134] But with an American Governor-General responsible to an American President, with an American majority on the Supreme Court and appeal to the United States Supreme Court, and with plenary power in Congress, ultimate control, significant of American sovereignty, is still in the United States.

By comparison with the governments of Australia and Canada, little difference is seen between the power which exists in those self-governing commonwealths and what is in force in the Philippines.[134a]

But more important still, the Philippine Autonomy Act promises Philippine independence "as soon as a stable government can be established." While there is no definition of "stable government," the law does intimate that it is desirable that through this larger "use and exercise of popular franchise and governmental powers" there may be a "speedy accomplishment of such purpose."

Tenth and Last Step—Philippine Independence.

§ 78. The so-called Philippine problem is, therefore, solved for a time at least. The peaceful methods

Assembly was not an isolated, much less casual, fact. Its casual cause was the Act of Congress of July 1, 1902, but its true cause is lost among the gloomy mists of that past over which we have cast a retrospective glance. . . . The Philippine Assembly is nothing but the child of the Philippine revolution." Quoted by Nieva, The Philippine Assembly, in Builders of a Nation, pp. 77, 78. Dr. James A. Robertson, The Evolution of Representation in the Philippine Islands, 6 Journal of Race Development, Oct., 1915, p. 155, traces popular government back to pre-Spanish periods.

[134] Writing as far back as 1902, Professor Jeremiah W. Jenks said: "The United States has already given to the Filipinos a larger portion of self-government than has ever been granted under any circumstances to any other Oriental people. The United States has already granted more self-government than any other nation has considered wise, or safe, or beneficial to the people themselves." XXVI R. of R's, Nov., 1902, pp. 580, 588, "Self-Government in Oriental Dependencies."

[134a] Read Reinsch, Colonial Government, Ch. XII.

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counseled by Filipino leaders have succeeded where the plottings of new uprisings would have failed.[135] The factors settling the question have been primarily American. Extermination was unthinkable. Assimilation was impossible. Permanent retention was unwise. Ultimate independence was the only alternative.[136] The Philip-

[135] See Mabini's Manifesto introductory to his work on *La Revolución Filipina,* Le Roy's English translation, XI Am. His. Rev. (1900) p. 860; Mabini's letter to San Miguel of March 27, 1903, quoted in Devins, An Observer in the Philippines, pp. 221, 222.

[136] The action of the United States reminds us of what an experienced Spanish diplomat, Sinabaldo de Mas, wrote in 1842:

"The laws of every state must have one object, and the wiser and more perfect they are, the better they fulfill their end. To discourse, then, on those laws which are advisable in Filipinas, one must take note of the intentions that the government may have in regard to the Islands. These intentions will probably be reduced to the following plans or principles.

"To conserve the colony forever, that is to say, without its separation being thought of.

"To consider indifferently its loss or its conservation, and the fate of the Spaniards living in the colony.

"To resolve upon emancipation, and prepare the colony for giving it freedom. (A note by Mas at this point discusses the other admissible plan, 'namely, to cede the country to some foreign power.') . . .

"If I had to choose I would vote for the last. . . .

"In conclusion, if we are conserving the Islands for love of the Islanders, we are losing our time, and merit, for gratitude is sometimes met with in persons, but never can it be hoped for from peoples; and indeed through our love, why do we fall into an anomaly, such as combining our claim for liberty for ourselves, and our wish at the same time to impose our law on remote peoples? Why do we deny to others the benefit which we desire for our fatherland? By these principles of universal morality and justice, and because I am persuaded that in the midst of the political circumstances in which España is at present, the condition of that colony will be neglected; that none of the measures which I propose for its conservation (this is my conviction) will be adopted; and that it will emancipate itself violently with the loss of considerable property and many lives of Euro-

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pines will undoubtedly neither be a neutralized state nor an American protectorate.[137] They will not be neutralized, because among the oldest traditions of the United States is an aversion to political alliances with foreign powers. They will not be an American protectorate, be-

pean Spaniards and Filipinos. I think that it would be infinitely more easy, more useful, and more glorious for us to acquire the glory of the work by being the first to show generosity. Hence, the foreign authors who have unjustly printed so many calumnies against our colonial governments, authors belonging to nations who never satisfy their hunger for colonies, would have to say at least this once: 'The Spaniards crossing new and remote seas, extended the domain of geography by discovering the Filipinas Islands. They found anarchy and despotism there, and established order and justice. They encountered slavery and destroyed it, and imposed political equality. They ruled their inhabitants with laws, and just laws. They christianized them, civilized them, defended them from the Chinese, from Moro pirates, and from European aggressors; they spent much gold on them, and then gave them liberty.'" Internal Political Conditions of the Philippines, 1842, Vol. LII Blair and Robertson, The Philippine Islands, pp. 30, 31, 87, 89.

[137] Neutralized States and Neutralization, generally described in I Moore, International Law Digest, sec. 12; C. F. Wicker, Neutralization; C. F. Wicker, The United States and Neutralization, 106 Atlantic Monthly, Sept., 1910, p. 304; C. F. Wicker, The Question of the Philippine Neutrality, 110 Atlantic Monthly, November, 1912, p. 648; Javier Gonzalez, The Neutralization of the Philippines, 5 *Cultura Filipina,* May, 1915, p. 79; Garner, Introduction to Political Science, pp. 163, 164. For the literature relating to neutralized states see Despagnet, "Cours de Droit international public," pp. 145-162; Oppenheim, Vol. I, pp. 140-146; Holland, "Studies in International Law," pp. 270-272; Rivier, "Principes," Vol. I, sec. 7; Piccioni, "Essai sur la Neutralité perpetuelle"; Regnalt, "Des Effets de la Neutralité perpetuelle"; Tswettcoff, "De la Situation juridique des Etats neutralisés." Protectorates described in I Moore, International Law Digest, sec. 14; C. F. Randolph, Law and Policy of Annexation, pp. 150, 156, 209-211, etc.; Garner, Introduction to Political Science, pp. 161, 162; Hart, Actual Government, pp. 373-375; Ireland, The Far Eastern Tropics, p. 255. "If the United States is to be the guardian of the Philippines, it is

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cause the gain is not considered proximate to the danger. The Philippines will, when conditions are met, be unqualifiedly independent with no restrictions whatsoever.

Of the Americans interested, those will be pleased who believe that above all the United States should keep faith and fulfill promises predicated on platform pledges.[138] Those will be pleased who feel that the Philippines are an expense, a burden, and a danger.[139] Those will be pleased who regard the national policy of the United States as against the possession of outlying unassimilated

bound to intervene in case of disorders there, and to take measures to prevent their recurrence. Moreover, there is no panacea in the word 'protectorate,' for a dependency may have less liberty than a colony: the 'East Africa Protectorate' is a benevolent despotism; Cape Colony enjoys a large measure of self-government. In the end, the power responsible for the maintenance of order must determine the extent of the local privileges. To be sure, some declare that the Filipinos are capable of orderly self-government, and therefore will make no difficulties for the protecting power; but the American people, with the example of Cuba before them, are likely to be slow in accepting this assurance." Coolidge, The United States as a World Power, p. 168.

[138] As former President Roosevelt in XXXII Everybody's Magazine, January, 1915, p. 120, and W. Morgan Shuster, 87 Century Magazine, February, 1914, p. 422.

[139] Arguments relative to the abandonment of the Philippines are not new as is shown by an account by L. de Argensola, A New Collection of Voyages and Travels into Several Parts of the World (compiled by John Stevens, London, 1711). We read that at the end of the sixteenth century,

"The Council of State, observing that the Philippine Islands were rather an Expence than an Advantage to the Crown, being many, and hard to be maintained, had proposed to King Philip to quit them and withdraw the Court of Justice and Garrison that defend them. They added the Example of the *Chineses* who abandoned them tho' they are such near neighbours, and can relieve them with much Ease, as if they were joyning to their Continent. That as Spain governs them, the loss they occasion is considerable, without any Hopes that it can ever be alter'd for the better; a vast Quantity of Silver being sent thither from New Spain, both

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territories.[140] Those will be pleased who want a literal compliance with the tenet of the Declaration of Independence relative to the consent of the governed. To them the words of Abraham Lincoln are priceless: "No man is good enough to govern another man without that

for the usual Expenses, and to buy Commodities; that so all that Treasure is convey'd by the Hands of the *Chineses* into the Heart of those Dominions (China). They alleged that a Monarchy dispers'd and divided by so many seas and different climates could scarce be united; nor could humane Wisdom, by settled Correspondence, tye together Provinces so far remov'd from one another by Nature. That these Arguments are not the Offspring of Wit, but of Experience, and Truths obvious to the Senses. That all such as might be urg'd against them were only grounded upon Honour, and full of a generous Sound, but difficult in the Execution; and therefore the best Expedient was for the King to strengthen himself in Europe, where his forces can be ready to meet all Dangers without being expos'd to the Hazards of the Sea and the Dominions of Others. Each of these Arguments was so fully represented by the Officers of the Revenue, that the Proposal (to abandon the Philippines) was thought worthy to be debated and consider'd." Harper's History of the War in the Philippines, p. 7. "Nothing should ever be accepted which would require a navy to defend it." Mr. Jefferson to President Madison, Apr. 27, 1809, 5 Jeff. Works, 443, I Moore, International Law Digest, p. 429.

A statement prepared by the Bureau of Insular Affairs shows that for the fiscal years 1903-1914, inclusive, the Philippines had cost the United States $119,010,677.14 (₱238,021,354.28) as follows:

Army	$113,711,371.82
Coast and Geodetic Survey	1,947,379.82
Congressional Relief Fund	3,000,000.00
Philippine Census	351,925.50

Add some other expenses not there mentioned and include the years 1898-1902, 1915, 1916 (not extraordinary war expenses) and the total would reach about $200,000,000 (₱400,000,000). See Hearings Before the Committee on the Philippines U. S. Senate, 63d Congress, 3d Session, p. 666.

[140] "The policy of this government, as declared on many occasions in the past, has tended toward avoidance of possessions disconnected from the main continent. Had the tendency of the United States been to extend territorial dominion beyond interven-

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other's consent. When the white man governs himself, that is self-government; but when he governs himself and also governs another man, that is more than self-government—that is despotism." [141] Every man, they argue, is entitled by natural law to be governed by the voice of

ing seas, opportunities have not been wanting to effect such a purpose, whether on the coast of Africa, in the West Indies, or in the South Pacific." Mr. Frelinghuysen, Sec. of State, to Mr. Langston, June 20, 1882, Ms. Inst. Hayti, II, 339, referring to a proposal of President Salomon to cede to the United States the Island of La Fortue. "The policy of the United States, declared and pursued for more than a century, discountenances and in practice forbids distant colonial acquisitions." Mr. Bayard, Sec. of State, to Mr. Pendleton, Sept. 7, 1885, MS. Inst. Germ. XVII, 547. I Moore, International Law Digest, sec. 100, at pp. 432, 433.

[141] But all will not agree; for example Senator John C. Spooner in the United States Senate, May 31, 1902, said: "The Declaration of Independence and its words 'the consent of the governed' has played from the beginning a conspicuous part in the debate upon this subject. I confess I have not been able to see its applicability. Perhaps that is partly due to our differences as to the facts. To me, it is clear that a condition precedent to the applicability of the doctrine is the existence of a people of sufficient intelligence, cohesion, and power of organization to alter or to abolish a form of government which to them had become destructive of the ends of government and to institute a new government and to maintain it.

"If the 10,000,000 inhabitants of the Philippines had, independent of our presence and operations there as an enemy of Spain, organized an insurrection, declared their independence and won it, and established a government to suit themselves it would have been their right to maintain it as they saw fit, without dictation from any other government or people. But that is not this case. From my point of view they had done none of these things in any substantial sense, and we acquired from Spain by the treaty the title to the Archipelago, the sovereignty over it and the right to govern it. That in such case adherence to the Declaration of Independence, if it be applicable at all, requires, regardless of the fitness of the people to govern, that they shall be turned loose to form a government of their own I deny.

"The doctrine of the consent of the governed, as used here as an

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his own country. Those will be pleased who assert that "Any decent kind of government of Filipinos by Filipinos is better than the best possible government of Filipinos by Americans." [142] And those will be pleased who submit facts and arguments to prove that the Filipinos have more right to an independent government than many European and American countries.

Of the Filipinos, those will be gratified who aspire to immediate and complete independence. The desire for a national emblem is natural. The love of native land—not attempted inculcation of Philippinized-American patriotism for America, but Philippine patriotism for the Philippines—should be respected. All peoples wish to manage their affairs in their own way. A government from without and above no matter how beneficent and philanthropic, shocking, as it must unconsciously do, native customs and ideals, imposing a foreign idiom, and asserting a superiority, will always be unpopular. In the history of the United States the territory of Louisiana under a mild form of government yet asked: "Without any vote in the election of our Legislature, without any check upon our Executive, without any one incident of self-government, what valuable 'privilege' of citizenship is allowed us, what 'right' do we enjoy, of what 'immunity' can we boast, except, indeed, the degrading exemption from the cares of legislation, and the burden of public

argument against the government for what it has done and proposes to do in the Philippines, has been violated by this nation from the beginning.

"We purchased Louisiana, a vast territory. Did we ask the consent of the people? Did we not put upon that people, many of them intelligent people, too, a government against which they protested?"

[142] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, p. 109.

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affairs?" [143] A quotation from Daniel Webster oft used by the anti-imperialists will be recalled: "No matter how easy is the yoke of a foreign power, no matter how lightly it sits upon the shoulders, if it is not imposed by the voice of its own nation and of its own people, he cannot, he must not, and he will not be happy under its burden."

Separation has been hastened much more rapidly than the conservatives prefer. Those Americans will disagree, who conscientiously and firmly hold that the Filipinos will not be ready for self-government in any period short of two generations,[144] who think the United States is doing an injustice to the people of the Islands, or who cherish the hope of a great imperial America, with outposts in the Orient. Those Filipinos will disagree who say privately that desiring independence, they also desire a permanent independence with protection.[145] Those foreign critics and a few American imitators, who are steeped in an unswerving faith in the superiority of the white man and the righteousness of a strong colonial policy, and who have predicted a failure for the American quixotic policy, will again delight in misanthropic prophecies.[146] Such action will be criticized by those who see nothing for certain races but dependence on a higher

[143] Annals of Congress, 8 Cong. 2d Sess. App. 1597-1608, found in Hart, American History Told by Contemporaries, Vol. III, pp. 379, 380. See also Bocobo, Civil Law Under the American Flag, I Philippine Law Journal, January, 1915, p. 288.

[144] William H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in "The Philippines," p. 105. Same statement made on numerous occasions. See address of Major H. Shelton, Assistant to Chief, Bureau of Insular Affairs, at Lake Mohonk Conference, October, 1912, for a fair analysis of the Philippine Problem from this standpoint.

[145] See Juan Sumulong, The Philippine Problem from the Filipino Standpoint, 178 No. Am. Rev. (1904), p. 867.

[146] See Ireland, The Far Eastern Tropics.

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race—usually the Aryan.[147] The attachment of unpolitical states to those possessing political organization is justified as in the interest of the world's civilization.[148]

[147] "The English Empire covers one-fifth of the globe; the Dutch Empire is as big as Europe, and the total of all the colonies of Northern Europe covers two-fifths of the surface of the earth, and perhaps over half. If we include Russia, it is more than three-fifths. Of the 1,500,000,000 of people now living, twenty-six and four-tenths per cent. are ruled by Great Britain; nine per cent. by Russia; six and three-tenths per cent. by France; six per cent. by America; four per cent. by Germany, a total of 52.6 per cent. If we include the nations under the guidance of Holland, Belgium, Scandinavia and Denmark, and those protected by the United States, it is probable that six or seven-tenths of the human race are guided by the Aryan brains of Europe and America, and more than half, probably seven-tenths of these, are controlled by the English. The Northwestern corner of Europe is already the cranium of the future world nation, and to a certain extent London holds the main ganglion—the will—for little can be done in international affairs until it is consulted." Woodruff, Expansion of Races, p. 449. See also Colquhoun, Control of the Pacific, pp. 253, quoted with other authorities in Woodruff, Expansion of Races, p. 306. Compare with Jean Finot, Race Prejudice, Eng. translation.

[148] "The political subjection or attachment of the unpolitical nations to those possessing political endowment appears, if we may judge from history, to be as truly a part of the course of the world's civilization as is the national organization of states. I do not think that Asia and Africa can ever receive political organization in any other way. . . .

"We must conclude, from the manifest mission of the Teutonic nations, that interference in the affairs of populations not wholly barbaric, which have made some progress in state organization, but which manifest incapacity to solve the problem of political civilization with any degree of completeness, is a justifiable policy. No one can question that it is in the interest of the world's civilization that law and order and the true liberty consistent therewith shall reign everywhere upon the globe. A permanent inability on the part of any state or semi-state to secure this status is a threat to civilization everywhere. Both for the sake of the half-barbarous state and in the interest of the rest of the world, a state or states, endowed with the capacity for political organization, may righteously

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Some will again dissent who declare that human progress in the tropics is impossible.[149]

Point of view predetermines solution of the problem.

Spontaneous, long continued, and ringing gratitude on the part of the Filipino people for the action of the United States need not be expected.[150] Nations, like individuals, have short memories. The neglect of the Cubans for the relics of the Battleship Maine is a sorry example. Yet the people of the Islands may be expected to make such outward demonstration and to concede such privileges as would another people under similar conditions. Commissioner Quezon in a public address before the Congress of the United States has said that: "The Philippine Assembly, the body vested with full authority to speak for the people of the Islands, has on every occasion when a great concession has been made by this government to the Filipino people invariably spoken words of deep-felt gratitude." [151] His

assume sovereignty over, and undertake to create state order for, such a politically incompetent population. The civilized states should not, of course, act with undue haste in seizing power, and they should never exercise the power, once assumed, for any other purpose than that for which the assumption may be righteously made, *viz:* for the civilization of the subjected population; but they are under no obligation to await invitation from those claiming power and government in the inefficient organization, nor from those subject to the same." Burgess, Political Science and Constitutional Law, Vol. I, pp. 4, 47. Read Walter Lippmann, The Stakes of Diplomacy.

[149] See generally Ellsworth Huntington, Civilization and Climate.

[150] Read Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, pp. 75, 76; Foreman, The Philippine Islands, 3d Ed., p. 9.

[151] Congressional Record, Vol. 51, No. 268, p. 18773, Nov. 2, 1914. Read the concluding paragraph to Kalaw, The Case for the Filipinos, pp. 244, 245, where the "boundless gratitude to America" for independence is dwelt upon.

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facts are true, and there is no reason to question the sincerity of the Philippine Assembly.

The government which the Filipinos will deem best suited for the Islands will not be of the kind which Americans would establish. That is incontestable. Nevertheless, if the Filipinos are wise, they will retain the basic principles of Anglo-Saxon institutions which are as universal in their application to democracies as are the laws of nature. Neither can a perfect government be expected. Plato's ideal republic is no more attainable in the Philippines than it is in the United States.

The Filipinos submit that if left to themselves, they could maintain stable, internal administration. To this end, they point to capacity shown during American control, to their efforts to maintain public order, to their love for and progress in public instruction, to their exercise of the suffrage, to their administration of provincial and municipal governments, to an impartial Filipino judiciary, and to the record of the Philippine Assembly and of a Filipinized Philippine Commission. They deny that independence will bring disorder and chaos, that the people are ignorant, that *caciquism* will dominate, that relations between Christian and non-Christian will be strained, that the Moro problem is any more difficult for them than the Indian or Negro problems have been for the United States or the Ainus problem for Japan, that they have not had political experience, and that there is a lack of a common language. They contend that they constitute a nation. The physical characteristics are much the same; a common religion unites; aspirations are unified; one in race, in country, in religion, in aspirations.[152]

[152] See carefully prepared letter of the Nacionalista Party, Sept. 1, 1910, App. C, Special Report of Secretary of War Dickinson. "Because the Filipinos speak various dialects, some people believe they do not constitute a nation. But one who makes a slight study

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Referring back to our definition of a nation, much can be said in substantiation of the claim that the inhabitants of the Philippines are a nation. Is there geographic and ethnic unity? Yes. Geographically and ethnologically the Philippines belong to the Malay Archipelago and are of one family.[153] So one definition is answered. Do the

of these dialects promptly sees they are no more than variations of a single language, which has become modified for reasons that only a prolonged study of pre-Spanish Philippine history can explain. The slight mutual intercourse among the early Filipinos, living in islands and regions isolated from each other, gave rise to the differentiations that produced the dialects. But the physical characteristics that mark the Tagalogs, Visayans, Ilocanos, Bicols, etc., show at a glance their close relationship.

"An appeal to history makes the point still clearer. The unifying effect of Christian civilization, the acts in which the Filipino people united in order vigorously to oppose the all-embracing influence of the Friars under the Spanish régime, and, later, the very war that was waged by all Filipinos against Spain and the United States for the sake of independence, are practical demonstrations of a real and definite unity." Juan Sumulong, The Philippine Problem from the Filipino Standpoint, 178 No. Am. Rev. (1904) p. 861. A resolution of the Philippine Assembly of May, 1910, begins:

"Whereas the Philippine Assembly, as the legitimate representatives of the Filipino people, must be the faithful echo of what the latter thinks and feels: and

"Whereas the Philippine nation, being positively convinced that it possesses the actual capacity for self-government as a civilized nation, aspires ardently to be independent, and, trusting in the justice and in the tradition of the nation that now directs the fate and destiny of the Filipinos, anxiously hopes to obtain it as soon as practicable—immediately, if that be possible—from the Congress of the United States of America."

[153] If the term "race" be taken to apply to any composite body of individuals who are becoming or may become a distinct type by natural and artificial processes, then in the opinion of Professor Bean a Filipino race at present exists. Bean, Racial Anatomy of the Philippine Islanders, 1910, p. 216. The diverse groups in the Philippines could be assimilated into a homogeneous people. This can be accomplished by the volition of the different sections; by the

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component atoms believe the Philippines to be a nation which they revere as such? Yes. They speak of each other and recognize each other as Filipinos.[154] So another definition is answered. Do the Philippines possess a common language, laws, religion, traditions, interests, customs, and aspirations? No one could categorically answer. And in extenuation may it be said that many so-called nations would also fail to meet these ideal tests. One can never say exactly at what point individuals acquire the rights of a people. Of some of the elements of the definition it can, however, be said—Common laws exist. Traditions of a remote past can be found.[155] Tribal lines are not drawn. Language is necessarily no bar. Act 116 of the Constitution of the Swiss Confederation of 1874 provides that: "The three principal languages spoken in Switzerland, German, French, and Italian, shall be national languages of the Confederation." Differences in language in racial groups are not as great as

progressive expansion of a common language (English); by a common education which "will tend to produce a Filipino people which knows how to govern itself and how to obey its own laws"; by religion; by common attainable aspirations; by economic independence for the lower classes; all assisted by the physical and human environment of the Islands and their people. See Albert E. Jenks, Assimilation in the Philippines, American Journal of Sociology, May, 1914, pp. 773-791. "The Filipinos are not a nation, but a variegated assemblage of different tribes and peoples." Report of the First Philippine Commission, Vol. I, p. 182.

[154] See Inaugural Address of Ignacio Villamor as President of the University of the Philippines, Aug. 12, 1915.

[155] But Bowring, A Visit to the Philippines, pp. 314, 315, says: "They have, indeed, no traditions of former independence—no descendants of famous ancient chiefs or princes, to whom they look with affection, hope or reverence. There are no fragments left of hierarchies overthrown. No Montezumas, no Colocolos, are named in their songs, or perpetuated in their memories. There are no ruins of great cities or temples; in a word, no records of the remote past."

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in China, Austria, or the cantons of Switzerland.[156] And as the most important element uniting the Filipinos in nationality, is the memory of a common past and the hope of a common future.[157] Nationality, as in the early history of the United States, and as in the nineteenth and twentieth centuries of Philippine history, will be strengthened by the expansion of a common language, by mutual intercourse, by education, by attainment of the strength of individuality, and by struggles and hardships.[158]

The Filipinos have many national assets.[159] They possessed a native culture before the coming of the Spaniards. The Latin influence of Spain and Europe changed and improved their civilization. The Anglo-Saxon influence of the United States has again changed and improved their possibilities. It is said that they are centuries ahead of their Malay cousins.[160] Admiral Dewey's telegram that the people of the Philippines "are far superior in their intelligence and more capable of self-government than the natives of Cuba, and I am familiar with both races" will be recalled.[161] Democratic ideas among the

[156] See Willis, Our Philippine Problem, pp. 446, 447.

[157] See Ignacio Villamor, Inaugural Address as President of the University of the Philippines, Aug. 12, 1915.

[158] See Bancroft's History of the Constitution of the United States, Vol. II, pp. 323, 324.

[159] See Willis, Our Philippine Problem, p. 443, quoting from Dr. David J. Doherty.

[160] See Stuntz, The Philippines and the Far East, pp. 58, 59; and sec. 49 *supra*.

[161] "In the beginning many dictums, which now seen in perspective seem rather ridiculous, of alleged Filipino incapacity were advanced, and for a while adopted in administrative organization. It was held that a Filipino could not, for instance, drive a team of American horses or mules; and that a native could not be entrusted with the duties of ordinary clerkships." Millard, America and the Far Eastern Question, p. 408.

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Filipinos are not new.[162] Because a people differs from Americans is no proof that they are inferior in civilization. Because a Filipino is of another color, because he may dress in a curious but comfortable style, because he speaks a strange tongue, and because he may live in a thatched house, is no criterion any more than it is of the Japanese who live somewhat the same. The Filipino people respect their government and have an intense love for their family and their community. The state of the Filipino woman is superior to that of other Oriental countries. The people are not illiterate. Statistics show that the percentage of literacy is higher than in some countries in Central and South America and in the Balkans. Le Roy, a fair critic, estimated more than ten years ago that literacy ranged from 50% to over 70%.[163] The land area is sufficient—two-thirds that of Japan

[162] See Mariano Ponce, Historical Study of the Philippines, in Builders of a Nation, pp. 36 *et seq.*

[163] Le Roy, Philippine Life in Town and Country, p. 234. "More than 80 per cent of the Philippine people are illiterate." Special Report of Wm. H. Taft, Secretary of War, to the President, on the Philippines, p. 11. "In view of what has been said, Mr. Chairman, I think I can safely predict, without being over optimistic, that if a new census were to be taken to-day among the Christian population the degree of illiteracy will be found to have fallen to 15 or 20 per cent; or, in other words, the 85 per cent mentioned by the gentleman from Ohio will not represent those who can neither read nor write, but those who can both read and write." Speech of Hon. Manuel L. Quezon in the House of Representatives, The Philippine Bill, printed in Vol. 51, No. 268, p. 18772, November 2, 1914, Sixty-Third Congress, Second Session, Congressional Record. "The Filipino people has received under Spain not an Oriental but a European education, which has brought into being a body of men capable of directing the government of the country. It has often been said that the great majority of the population lack not only political experience, but even the most elementary education. But this last is not a correct statement, for, apart from Spanish, the Filipinos who cannot at least read and write their own dialect (A similar condition is to be noted in a great part of the Japanese

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proper, double the New England States and larger than the British Isles. Good harbors are plentiful. Potential commercial wealth is inestimable. Conceding that climate is a permanent factor, it is only relatively so. A population increasing at a rate equal to that of any people may be confidently expected. The history of the Philippines reveals this. The density of population is at present small, about 70 persons to the square mile. But Dr. Barrows estimates that by 1950, the population will be over fifteen million, and in a few generations will equal the Japanese in numbers and national resources.[164] The people themselves offer opportunities for development.[165] Authors of varying dates agree in ascribing to the Filipinos many excellent personal characteristics.[166] There is nothing to indicate that they cannot attain to an advanced standard. Authors of many dates have also vied with

nation. Yet, nevertheless, no one would have the right to say that the Japanese who know only their own dialect, are wholly ignorant.) are few and rare indeed." Juan Sumulong, The Philippine Problem from a Filipino Standpoint, 178 No. Am. Rev. (1904), p. 862. See the last almanacs for a table showing the literacy of different countries—illiteracy in Philippines given at 55.5 per cent; Spain 58.7; Greece 57.2; Argentina 54.4, etc.

[164] Address by Dr. David P. Barrows before the Lake Mohonk Conference, Oct. 20, 1910, p. 92; quotation from same author found in Forbes-Lindsay, America's Insular Possessions, Vol. II, p. 116. See sec. 49, note 117, *supra,* for a table showing the increase of population during the Spanish régime.

[165] "Contrast the Filipinos with other Malays and the Oriental peoples, and I ask you to name a people offering more opportunities for development along the lines which American ideals require than the people of these Islands." Address by Hon. William H. Taft, Civil Governor of the Philippine Islands, delivered before the Union Reading College, printed in Vol. I Official Gazette (Supplement), December 23, 1903, p. 6.

[166] See remarks on the Philippine Islands, 1819-1822, by an Englishman, Vol. LI, Blair and Robertson, The Philippine Islands, pp. 100, 101; Palgrave, Ulysses or Scenes and Studies in Many Lands, p. 141; Coolidge, The United States as a World Power, pp. 164-166;

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each other in word pictures portraying the beauties of the Philippines. Legaspi, the first Governor-General, said in 1569: "The land is fertile. . . . This country is salubrious and has a good climate. It . . . has good ports." [167] The much travelled A. Henry Savage Landor in beginning his work "The Gems of the East" (p. 1) speaks of the Philippines as "a most enchanting country, a land full of weird surprises, of magnificent scenery and ideal vegetation, with an assortment of delightful people." In conclusion he states (p. 546) "I may say that in some eighteen years' travelling I have never enjoyed and been interested more than I was in the journey (over 16,000 miles) over these most enchanting Islands—really and truly, to any one with an unbiased mind, 'the gems of the East.'" [168] If there be pessimists,

Wright, A Handbook of the Philippines, Introduction, pp. xiii, xiv; Archbishop Harty, 62 Ind., May 30, 1907, p. 1246; Special Report of Wm. H. Taft, Secretary of War, to the President on the Philippines, p. 24; Worcester, The Philippines Past and Present, Vol. II, pp. 933, 934.

[167] Relation of the *Filipinas* Islands, Vol. III, Blair and Robertson, The Philippine Islands, p. 54.

[168] "Of the numerous groupes of islands which constitute the maritime division of Asia, the Philippines, in situation, riches, fertility, and salubrity, are equal or superior to any. Nature has here revelled in all that poets or painters have thought or dreamt of the unbounded luxuriance of Asiatic scenery. The lofty chains of mountains—the rich and extensive slopes which form their bases—the ever-varying change of forest and savannah—of rivers and lakes—the yet blazing volcanoes in the midst of forests, coeval perhaps with their first eruption—all stamp her work with the mighty emblems of her creative and destroying powers." Remarks on the Philippine Islands, 1819 to 1822, by an Englishman, Vol. LI, Blair and Robertson, The Philippine Islands, p. 74. "One cannot but be struck, in reference to the geographical character of these Islands, with the awful serenity and magnificent beauty of their primeval forests, so seldom penetrated, and in their recesses hitherto inaccessible to the foot of man. There is nothing to disturb their silence but the hum of insects, the song of birds, the noises of wild

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there are likewise optimists who foretell for Manila that it will be the political and commercial metropolis of the

animals, the rustling of the leaves, or the fall of decayed branches. It seems as if vegetation revelled in undisturbed and uncontrolled luxuriance. Creeping plants wander from tree to tree; lovely orchids hang themselves from trunks and boughs. One asks, why is so much sweetness, so much glory, wasted? But is it wasted? To the Creator the contemplation of his works, even where unmarked by human eye, must be complacent; and these half-concealed, half-developed treasures, are but reserved storehouses for man to explore; they will furnish supplies to awaken the curiosity and gratify the inquiry of successive ages. Rove where he may—explore as he will—tax his intellect with research, his imagination with inventions—there is, there will be, an infinite field around and above him, inexhaustible through countless generations. . . . They are covered with beautiful and spontaneous vegetable riches above, and bear countless treasures of mineral wealth below; their powers of production are boundless; they have the varieties of climate which mountains, valleys and plains afford—rains to water—suns to ripen—rivers to conduct—harbours for shipment—every recommendation to attract adventure and to reward industry; a population of only five or six millions, when ten times that number might be supplied to satiety, and enabled to provide for millions upon millions more out of the superfluities of their means." Bowring, A Visit to the Philippine Islands, pp. 85, 86, 106. "The natural riches of the country are incalculable. There are immense tracts of the most feracious soil; brooks, streams, rivers, lakes, on all sides; mountains of minerals, metals, marbles in vast variety; forest whose woods are adapted to all the ordinary purposes of life; gums, roots, medicinals, dyes, fruits, in great variety. . . .

"With a few legislative reforms," he concludes, "with improved instruction of the clergy, the Islands would become a paradise of inexhaustible riches, and of a well-being approachable in no other portion of the globe." M. Marcaida, a merchant of Manila, quoted in Bowring, A Visit to the Philippine Islands, pp. 318, 319. Mr. Gifford Palgrave, at one time Her Britannic Majesty's Consul at Manila, says: "Not the Ægean, not the West Indian, not the Samoan, not any other of the fair island clusters by which our terraqueous planet half atones for her dreary expanses of grey ocean and monotonous desert elsewhere, can rival in manifold beauties of earth, sea, sky, the Philippine Archipelago; nor in all that Archipelago, lovely as it is through its entire extent, can any island vie

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Orient.[169] National independence should tend to stimulate a development of all these latent potentialities.

Let him who scoffs at the impossibility of Philippine progress without even awaiting events make a comparison between the United States when she adopted her Constitution and the Philippines if she be permitted to ratify hers. In 1790 the number of inhabitants in the United States was under four million. The Philippines have double this. Of the American inhabitants, nearly one-fifth were negroes. The Philippines have nowhere near this proportion of non-Christians. Of the American inhabitants, the ancestors of eight-tenths were probably

with the glories of Luzon." Ulysses or Scenes and Studies in many Lands, p. 139. Monsieur Dumont D'Urville says: "The Philippines, and above all Luzon, have nothing in this world to equal them in climate, beauty of landscape, and fertility of soil. Luzon is the finest diamond that the Spanish adventurers have ever found." "I (Frederick H. Sawyer) know of no land more beautiful than Luzon, certainly of none possessing more varied features or offering more striking contrasts." Sawyer, The Inhabitants of the Philippines, pp. 2, 3. "The Philippines have the best tropical climate in the world; soil of unsurpassed richness; great forest wealth; promising mines; and a constantly growing population willing to work for a reasonable wage." Worcester, The Philippines Past and Present, Vol. II, pp. 917, 918.

[169] "There have been speculations—and M. Mallat (Geographical History of the Philippines, 1848) is among the sanguine anticipators of such an advent—that in process of time the Philippines may become the dominant political power of the Eastern world, subjecting to its paramount influence the Netherlands Archipelago, the Pacific, Australia, and even China and Japan, and that Manila is destined to be the great emporium for the eastern and south-eastern world." Bowring, A Visit to the Philippines, p. 97. "The position of Manila, a central point betwixt Japan, China, Annam, the English and Dutch ports of the Archipelago and Australia, is in itself extremely favourable to the development of a world-wide trade. Lapérouse said that Manila was perhaps the most fortunately situated city in the world." Jagor, Travels in the Philippines, Eng. Ed., 1875, p. 11.

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English and a homegenous part of the community. Of the Filipinos, at least as large a percent are of one race. Of the Americans, the intellect of the people was little developed. The graduating classes of all the colleges in 1789 counted up to about 170. The graduating classes of one university in the Philippines exceed this number. In economic conditions the United States were little advanced, although the country abounded in natural resources. The same statement can be written for the Philippines.[170]

In ante-Revolutionary days, members of the British House of Lords and House of Commons held no very flattering views of American ambitions and capacity. They were termed "egregious cowards." Their manners and ways of living were ridiculed. It was prophesied that if Great Britain abandoned the colonies, they must soon sue for succor or be overrun by every small state. A philippic by an Englishman in 1820 reads:

"Since the period of their separation, a far greater proportion of their statesmen and artists and political writers have been foreigners, than ever occurred before in the history of any civilized and educated people. During the thirty or forty years of their independence, they have done absolutely nothing for the Sciences, for the Arts, for Literature, or even for statesman-like studies of Politics or Political Economy. Confining ourselves to our own country, and to the period that has elapsed since they had an independent existence, we would ask, Where are their Foxes, their Burkes, their Sheridans, their Windhams, their Horners, their Wilberforces?—where their Arkwrights, their Watts, their Davys?—their Robertsons, Blairs, Smiths, Stewarts, Paleys and Malthuses?—their Porsons, Parrs, Burneys, or Bloomfields?—their Scotts,

[170] See Hart, Epochs of American History—Formation of the Union, 1750-1829, pp. 138, 139.

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Campbells, Byrons, Moores, or Crabbes?—their Siddonses, Kembles, Keans, or O'Neils?—their Wilkies, Laurences, Chantrys?—or their parallels to the hundred other names that have spread themselves over the world from our little island in the course of the last thirty years, and blest or delighted mankind by their works, inventions, or examples? In so far as we know, there is no such parallel to be produced from the whole annals of this self-adulating race. In the four quarters of the globe, who reads an American book? or goes to an American play? or looks at an American picture or statue? What does the world yet owe to American physicians or surgeons? What new substances have their chemists discovered? or what old ones have they analyzed? What new constellations have been discovered by the telescopes of Americans?—what have they done in the mathematics? Who drinks out of American glasses? or eats from American plates? or wears American coats or gowns? or sleeps in American blankets?—Finally, under which of the old tyrannical governments of Europe is every sixth man a slave, whom his fellow-creatures may buy and sell and torture?" [171]

No true American would concur with these biased assertions. But remembering—ponder the present greatness of the Republic—and ponder the black pictures which the misanthropic have drawn of these Isles. No false hopes should be aroused by Filipinos from the foregoing parallel. At least it is interesting as preaching charity and as showing possibilities.

Concede the inhabitants of the Philippines to be a nation, concede them their assets, and concede that the

[171] Rev. Sydney Smith, Who Reads an American Book, XXXIII Edinburgh Review, January, 1820, pp. 78-80, printed in Hart, American History Told by Contemporaries, Vol. III, pp. 512-514. See also Mrs. Frances Milton Trollope, Domestic Manners of the Americans (sec. ed.), 1832, I, 48-188.

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United States passes a law granting them independence —What then? Some will contend that one cannot confer independence on a people as one would present them with a public library or a drinking fountain; those of this mold will foresee oligarchy and anarchy on American withdrawal.[172] Independence may be even technically granted the Philippines, but this will not necessarily mean liberty or freedom for the people. The latter two qualities must be acquired.[173] Mabini recognized this when he spoke of many talking of "liberty without understanding it." But "by nothing is this ripeness and capacity for freedom so much promoted as by freedom itself." [174] Independence again may even be technically granted, but this will not necessarily mean self-government. The latter cannot be given.[175] Yet self-government "must mani-

[172] Ireland, The Far Eastern Tropics, pp. 258, 259. "Caciquism" described in Le Roy, Philippine Life in Town and Country, Ch. 6. See also Woodruff, Expansion of Races, p. 373.

[173] See Address by Paul Monroe before the Lake Mohonk Conference, Oct. 23, 1910, pp. 96-98.

[174] Humbolt, Sphere and Duties of Government, quoted in Woodburn, The American Republic, p. 26.

[175] "Self-government is not a mere form of institutions, to be had when desired, if only proper pains be taken. It is a form of character. It follows upon the long discipline which gives a people self-possession, self-mastery, the habit of order and peace and common counsel, and a reverence for law which will not fail when they themselves become the makers of law; the steadiness and self-control of political maturity. And these things cannot be had without long discipline.

"The distinction is of vital concern to us in respect of practical choices of policy which we must make, and make very soon. We have dependencies to deal with and must deal with them in the true spirit of our own institutions. We can give the Filipinos constitutional government, a government which they may count upon to be just, a government based upon some clear and equitable understanding intended for their good and not for our aggrandizement; but we must ourselves for the present supply that government. It would, it is true, be an unprecedented operation, reversing

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festly constitute the corner stone of the new edifice." [176] Capacity for independent self-government consists principally in maintaining public order, in upholding law, in stern self-discipline, and in fulfilling international obligations. Woe be the day if the Philippines gain the outward shell of independence and lose the inner substance of freedom, liberty, and self-government!

Concede again the inhabitants to be an independent nation with valuable assets and capable of self-government. Even so, prudence would dictate that the citizens mend the weak parts of the national structure, and even aspire to the ideal state. What Maximo Kalaw courageously terms "self criticism" should not be debarred from exerting its influence.[176a] All remaining geographic, ethnic, and economic barriers must be surmounted in

the process of Runnymede, but America has before this shown the world enlightened processes of politics that were without precedent. It would have been within the choice of John to summon his barons to Runnymede and of his own initiative enter into a constitutional understanding with them; and it is within our choice to do a similar thing, at once wise and generous, in the government of the Philippine Islands. But we cannot give them self-government. Self-government is not a thing that can be 'given' to any people, because it is a form of character and not a form of constitution. No people can be 'given' the self-control of maturity. Only a long apprenticeship of obedience can secure them the precious possession, a thing no more to be bought than given. They cannot be presented with the character of a community, but it may confidently be hoped that they will become a community under the wholesome and salutary influence of just laws and a sympathetic administration; that they will after a while understand and master themselves, if in the meantime they are understood and served in good conscience by those set over them in authority." Woodrow Wilson, Constitutional Government in the United States, pp. 52, 53.

"We can not give them self-government save in the sense of governing them so that gradually they may, if they are able, learn to govern themselves." President Roosevelt, Message of 1908.

[176] See Lord Cromer, Ancient and Modern Imperialism, p. 119 FF.

[176a] The Case for the Filipinos, pp. 240, 241.

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order to obtain a perfect union. Even geographic lines can be altered. The ambition of the state should be to secure complete ethnic homogeneity in its population as a powerful element of national strength. Such homogeneity has been, and can still more be, attained by a common language, a common education, a common religion, a common aspiration, and a common economic development. The essentials of self-government should be striven for: Self-discipline, form of character, common counsel, a habit of order and peace, reverence for law. Literacy and a general practical education should be insisted upon. Rizal enjoined his countrymen: "I have given proofs that I am one most anxious for liberties for our country, and I am still desirous of them. But I place as a prior condition the education of the people, that by means of instruction and industry our country may have an individuality of its own and make itself worthy of these liberties. I have recommended in my writings the study of the civic virtues, without which there is no redemption." [177] A common language should be provided; and obviously because of the efforts spent to diffuse English, because of its general use, because the language of business and social intercourse in the East, and because the language of free institutions, it had best be the English language. Macaulay, whose work in behalf of education in India was among his greatest accomplishments, in a minute regarding the use of the English tongue said: "In India, English is the language spoken by the ruling class. It is spoken by the higher class of natives at the seats of government. It is likely to become the language of commerce throughout the seas of the East. It is the language of two great European communities which are rising, the one in the

[177] Quoted in Craig, Lineage, Life, and Labors of José Rizal, pp. 235, 236.

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south of Africa, the other in Australasia; communities which are every year becoming more important, and more closely connected with our Indian Empire. Whether we look at the intrinsic value of our literature or at the particular situation of this country, we shall see the strongest reason to think that, of all foreign tongues, the English tongue is that which would be the most useful to our native subjects." [178] Mabini in his "True Decalogue," published as a part of the constitutional program for the Philippine Republic, included this provision: "Whenever the English language is sufficiently diffused through the whole Philippine Archipelago it shall be declared the official language."[179] Nothing will help more in creating solidarity among the people than a mutual idiom. A love for constitutional liberty should be constantly fostered. Industrial advance is essential and possible. Economic

[178] See Syed Mahmood, A History of English Education in India, pp. 50, 51, quoted in Thwing, Universities of the World, pp. 214, 215.

[179] Quoted in Worcester's The Philippines Past and Present, Vol. II, p. 778 n. citing Taylor, 19 MG., 20 MG. The desire of the rising generation of Filipinos for the continuation of English as the national tongue is seen in Kalaw, The Case for the Filipinos, p. 245, and in numerous letters to the press. President Wilson, Division and Reunion, pp. 341, 342, writes: "If the Filipino people are ever to come into a beneficial enjoyment of that self-government toward which American rule avowedly looks, they must have a language—and this it is very evident, can be neither one of their native dialects nor yet Spanish. Why then, should it not be English, with its guaranty of communication with ourselves and participation in our thought." Mr. E. H. Babbitt, XXV The World's Work, Feb., 1908, p. 9903, predicts that within a century English will be the vernacular of twenty-five per cent. of the people of the world, and will be read by fifty per cent. Even now seventy-five per cent. of mail matter is addressed in English. More than half of the world's newspapers are in English, and as these have the largest circulation perhaps three-quarters of the world's newspaper reading is done in English.

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independence is as important as political independence. Attempts should be made to at least quadruple the per capita amount of exports. Foreign capital should be encouraged to enter the Philippines. Chinese immigration would be an important factor in developing the resources of the Islands, and even in stimulating the race.[180] Foreign immigration should, however, be safeguarded in order not to endanger the existence of the state or its customs or institutions.[181] The keywords of the Baconian

[180] See Report, First Philippine Commission, Part X. The position of the Chinese in the Islands, under the Spanish administration, is described by Jagor, Travels in the Philippines, Ch. XXVI. In his opinion the Chinese "are destined to play a remarkable part, inasmuch as the development of the land-cultivation demanded by the increasing trade and commercial intercourse can be effected only by Chinese industry and perseverance." The probable effects of the introduction of unskilled Chinese labor are concisely presented in Professor Jenk's admirable Report to the Secretary of War, dated 1902: "It is believed that such a measure would result, with here and there an individual exception, not at all to the disadvantage of the Filipino, but in the long run decidedly to his benefit through improved business conditions in the Islands, which would furnish to him not merely a better market for his produce, but also a better opportunity for engaging in the kind of work for which he is best fitted and which most closely accords with his tastes." Quoted in Ireland, The Far Eastern Tropics, p. 232. "I am emphatically opposed to the general policy of admitting the Chinese; first, because the Filipinos have the strongest opinion that it will be for their detriment, and second, because I believe the history of the Straits Settlements shows that it will be not for their prosperity as distinguished from the material prosperity of the Islands." Address by Hon. William H. Taft, Civil Governor of the Philippine Islands, delivered before the Union Reading College, printed in Vol. I, Off. Gaz. (Supplement), December 23, 1903, pp. 5, 6. Professor Bean found that "The type of students with a large amount of Chinese admixture have the highest class standing." Bean, Racial Anatomy of the Philippine Islands (1910) Ch. 1, p. 39.

[181] See Burgess, Political Science and Constitutional Law, Vol. I, pp. 43, 44.

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doctrine "utility and progress" must be the national motto. Tranquillity is indispensable. National vices should unflinchingly be recognized and as unflinchingly eradicated. Charity for unjust prejudice should be engendered in the land. Rizal was wont to say: "When I read or hear the contemptuous European judgments of my people, I remember my own youthful ideas, and the anger that might flame up in me is quenched. Smiling, I can repeat the French *'Tout comprendere, c'est tout pardonner.'* "[182] United the Philippines can hope to stand, divided they will fall. The Tagalog proverb runs: Ang pagcatototo nang loob ang yguinagagaling nang lahat.—Unity of purpose brings certainty of success.

The government of internal affairs can be expected to run smoothly. Maintenance of external relations will prove more difficult—a navy, an army, a diplomatic and consular corps,—money and yet more money needed. Remember, however, that under the Spanish administration, the inhabitants of the Philippines bore all such expenses,[183] that taxation is comparatively speaking small, and that the national debt is insignificant. Unfortunately, nationalism guided by the doctrine of Machivaele which casts aside ordinary rules of morality has evolved into national imperialism. Such nations regard the world as for the strong and in which the weak are condemned to serve the powerful or to disappear.[184] This dire future is

[182] Quoted in XIX Review of Reviews for April, 1899, p. 471, summary of an article by Hjalmar Stolpe in the *Nordisk Tidskrift.*

[183] See sec. 44 *supra.*

[184] See Reinsch, World's Politics, pp. 3-15; Woodruff, Expansion of Races, pp. 241, 325, 449, etc.; Millard, America and the Far Eastern Question, pp. 486, 487. "After all it is only another round, as it were, in the inevitable struggle between the superior and the inferior races for the possession of the earth, with an inside fight going on between the superior powers as to which shall attain the greatest colonial and commercial efficiency. To-day it is clear that the future belongs to the large and the powerful state. The day

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predicted for the Philippines. The spectre of Japanese conquest bothered Spain and affects the policy of the United States in the Philippines. It may be expected to give concern to the new Philippine Republic.[185] There will be those who will prophecy a speedy absorption of the Islands on slight pretext by Japan. The Islands are too near the vortex of the Pacific's great international storms. Even so, fear of foreign control is true of other countries. It is not improbable that some will favor annexation to Japan.[186] Mayhap a Pan-Oriental Union or a Japanese Monroe Doctrine will guarantee Philippine integrity. One solution would be, independence under a British protectorate, for thereby the Islands would rest secure under the guns of the greatest Navy in the world. would be developed by a commercial people, and would be assured of a mild government with a minimum of intervention. The European conflagration may burn out the baser elements of hatred and greed leaving the finer alloy of friendship and altruism. Who can say? Even the wisest have erred in speculation.

The stars and stripes have been drawn aside to show beautiful Filipinos the golden sunrise of autonomy. Whether or not autonomy shall blend into the perfect day of independence, self-government, democracy, and liberty, free from foreign control, is chiefly for the Filipino people to say. That is the new Philippine problem.

of the little compact and self-contained states, however high their social efficiency may be, is over." The Chief Justice of Hongkong in the Golden Horse-Shoe, by Stephen Bonsal, pp. 202, 203.

[185] See the fair discussion of this question in Coolidge, The United States as a World Power, pp. 357-364.

[186] Several months before the outbreak (1895-96), the *Katipunan* sent a deputation to Japan to present a petition to the Mikado, praying him to annex the Philippines. This petition, said to have been signed by 5,000 Filipinos, was received by the Japanese government, who forwarded it to the Spanish government. Foreman, The Philippine Islands, 3d Ed. pp. 364, 365.

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Résumé.

§ 79. American Philippine policy.[186a]—As a conclusion, evolving from the facts of these various governmental advances, can be seen fairly clearly a consistent Philippine policy. This policy begun haltingly and reluctantly under opportunist sponsors, dividing public opinion into opposing camps, but never squarely decided by the sovereign people, can yet be gleaned from the words of the Presidents, the legislation of Congress, and the interpretation of the Governors-General and other high officials.

Various motives, as we have seen, had induced the United States to retain the Philippines. Only one, the altruistic desire to extend autonomy and popular self-government to an alien race, and to promote the welfare and prosperity of the Filipino people, had until recently any marked effect on American Philippine policy. Said Mr. Justice Holmes of the United States Supreme Court: "So far as consistent with paramount necessities, our first object in the internal administration of the Islands is to do justice to the natives, not to exploit their country for private gain."[187] For example, acquisition of the Philippines was not for the purpose of acquiring the lands occupied by the inhabitants.

Departing from the colonial history of other countries, which, as in the Dutch administration of the East Indies, meant exploitation of the Islands by force, chiefly for the benefit of the home country, or which, as in the British rule of India, became government also by force but subordinated to the broad national interests;[188] the United

[186a] See generally Kalaw, The Case for the Filipinos, Appendices D, E, F.

[187] Cariño *v.* Insular Government (1909) 212 U. S. 449, 53 L. Ed. 594.

[188] See Millard, America and the Far Eastern Question, pp. 405, 406.

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States elected to set a new ethical standard in the dealings of a powerful and dominant race with a weak and subject race. Retaining the same spirit which had governed other acquisitions, the humane treatment of the people in the Louisiana purchase, Florida, the Mexican cessions, Alaska, Hawaii, and Cuba was pointed to with pride. Government by affection in the role of trustees and not government by force in the role of masters was the national bipartisan platform. Going back to the early history of the United States there was followed the report of the committee of the House of Representatives appointed to consider and report upon the petition of the inhabitants of Louisiana to be relieved from some of the more arbitrary provisions of the Act of 1804, wherein it was said: "Only two modes present themselves, whereby a dependent province may be held in obedience to a sovereign state—force and affection. The first of these is not only repugnant to all our principles and institutions of government, but it could not be more odious to those on whom it would operate than it would be hostile to the best interests as well as the dearest predilections of those by whom, in this instance, it would have to be exercised." [189] With the same legislative language and with the same general principles used years before, new conditions were to be met in a similar tolerant spirit.

President McKinley was responsible for the initial policy. Who can doubt but what the martyred President's motives were of the highest? Senator Hoar, his honorable critic, writes in his Autobiography: "I have no doubt whatever that in the attitude that he took (talking of McKinley), he was actuated by a serious and lofty purpose to do right. I think he was led on from one step to another by what he deemed the necessity of the occasion." [189a] Very early the President announced: "The

[189] Snow, The Administration of Dependencies, p. 540.

[189a] Hoar, Autobiography of Seventy Years, Vol. II, p. 309.

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Philippines are ours not to exploit, but to develop, to civilize, to educate, to train in the science of self-government. This is the path which we must follow or be recreant to a mighty *trust* committed to us." Not long before his assassination, Mr. McKinley said: "These Philippine Islands are ours, not to subjugate, but to emancipate; not to rule in the power of might, but to take to those distant people the principles of liberty, of freedom of conscience, and of opportunity that are enjoyed by the people of the United States." Expanded in the inspired proclamation of the Schurman Commission, there was laid down the cardinal principle that "the supremacy of the United States must and will be enforced throughout every part of the Archipelago, and those who resist it can accomplish no end other than their own ruin." And it stated that "the aim and object of the American government, apart from the fulfillment of the solemn obligations it has assumed toward the family of nations by the acceptance of sovereignty over the Philippine Islands, is the well-being, the prosperity, and the happiness of the Philippine people, and their elevation and advancement to a position among the most civilized peoples of the world." Changes were to be effected by granting to the Philippines "an enlightened system of government under which the Philippine people may enjoy the largest measure of home rule and the amplest liberty consonant with the supreme ends of government and compatible with these obligations which the United States has assumed toward the civilized nations of the world." The President of this Commission construed the American point of view to mean "ever increasing liberty and self-government . . . and it is the nature of such continuously expanding liberty to issue in independence." [190]

[190] Philippine Affairs, A Retrospect and Outlook, An Address by Jacob Gould Schurman, President of the First Philippine Commission, before the Members of Cornell University, pp. 42, 90.

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President McKinley, in his Instructions to the second Philippine Commission, stated definitely that the government to be continued and established was not designed "for our satisfaction, or for the expression of our theoretical views, but *for the happiness, peace, and prosperity of the people of the Philippine Islands.*" And Congress in the Philippine Bill expressly "approved, ratified, and confirmed" the presidential policy thus defined. The Senate, although not authoritatively, because the resolution never reached a vote in the House, showed its sentiments by passing the McEnery Resolution just after ratifying the Treaty of Paris, providing "That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said Islands as an integral part of the territory of the United States; but it is the intention of the United States to establish in said Islands a government suitable to the wants and conditions of the inhabitants of said Islands to prepare them for local self-government, and in due time to make such disposition of said Islands as will best promote the interests of the citizens of the United States and the inhabitants of said Islands."

Mr. Roosevelt, succeeding Mr. McKinley in the Presidential chair, followed sedulously the policy of the martyred President. In his first message to Congress on December 3, 1901, President Roosevelt said: "Our earnest effort is to help these people upward along the stony and difficult path that leads to self-government. We hope to make our administration of the Islands honorable to our Nation by making it of the highest benefit to the Filipinos themselves. . . . It is no light task for a nation to achieve the temperamental qualities without which the institutions of free government are but an empty mockery. Our people are now successfully gov-

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erning themselves, because for more than a thousand years they have been slowly fitting themselves, sometimes consciously, sometimes unconsciously, toward this end. What has taken us thirty generations to achieve, we cannot expect to see another race accomplish out of hand, especially when the large portions of that race start very far behind the point which our ancestors had reached even thirty generations ago. . . . We do not desire to do for the Islanders merely what has elsewhere been done for tropic peoples by even the best foreign government. We hope to do for them what has never before been done for any people of the tropics—to make them fit for self-government after the fashion of the really free nations." Guided undoubtedly by the advice of Mr. Taft, he later carried the Philippine policy farther than had President McKinley, who did not mention the word "independence," in his message at the beginning of the second session of the Sixtieth Congress in 1908: "*I trust that within a generation the time will arrive when the Philippines can decide for themselves whether it is well for them to become independent* or to continue under the protection of a strong and disinterested power, able to guarantee to the Islands order at home and protection from foreign invasion. But no one can prophesy the exact date when it will be wise to consider independence as a fixed and definite policy. It would be worse than folly to try to set down such a date in advance, for it must depend upon the way in which the Philippine people themselves develop the power of self-mastery." [190a]

[190a] In his Autobiography, pp. 543-545, Mr. Roosevelt writes: "As regards the Philippines my belief was that we should train them for self-government as rapidly as possible, and then leave them free to decide their own fate. I did not believe in setting the time-limit within which we would give them independence, because I did not believe it wise to try to forecast how soon they would be fit for self-government; and once having made the

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Mr. Taft, who, as President of the second Philippine Commission, first Civil Governor, Secretary of War, and President, had most to do with formulating and enforcing American policies in the Philippines, upon the occasion of the inauguration of the Philippine Assembly, said: "The avowed policy of the national administration under these two Presidents (McKinley and Roosevelt) has been and is to govern the Islands, having regard to the interest and welfare of the Filipino people, and by the spread of general primary and industrial education and by practice in partial political control to fit the people themselves to maintain a stable and well-ordered government affording equality of right and opportunity to all citizens. The policy looks to the improvement of the people both industrially and in self-governing capacity. As this policy of extending control continues, it must logically reduce and finally end the sovereignty of the United States in the Islands, unless it shall seem wise to the American and Filipino peoples, on account of mutually beneficial trade relations and possible advantage to the Islands in their foreign relations, that the bond shall not be com-

promise I would have felt that it was imperative to keep it. . . . The time will come when it will be wise to take their own judgment as to whether they (the Filipinos) wish to continue their association with America or not. There is, however, one consideration upon which we should insist. Either we should retain complete control of the Islands or absolve ourselves from all responsibility for them. Any half and half course would be foolish and disastrous. We are governing and have been governing the Islands in the interests of the Filipinos themselves. If after due time the Filipinos decide that they do not wish to be thus governed, then I trust that we will leave; but when we do leave it must be distinctly understood that we retain no protectorate—and above all that we take part in no joint protectorate over the Islands, and give them no guarantee of neutrality or otherwise; that, in short, we are absolutely quit of responsibility for them, of every kind and description."

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pletely severed." [191] Mr. Taft repeated the same idea in his special report to the President on the Philippines and on numerous other occasions adding, however, that "Any attempt to fix the time in which complete self-government may be conferred upon the Filipinos in their own interest, is I think most unwise," [192] but intimating that the necessary preparatory and educational period was at least one generation.

All of the Governors-General, who served under Republican administrations, have naturally reached conclu-

[191] Taft, Present Day Problems, p. 13.

[192] Special Report of Wm. H. Taft, Secretary of War, to the President, "on the Philippines, p. 74. In the same report he said: Shortly stated, the national policy is to govern the Philippine Islands for the benefit and welfare and uplifting of the people of the Islands and gradually to extend to them, as they shall show themselves fit to exercise it, a greater and greater measure of popular self-government. One of the corollaries to this proposition is that the United States in its government of the Islands will use every effort to increase the capacity of the Filipinos to exercise political power, both by general education of the densely ignorant masses and by actual practice, in partial self-government, of those whose political capacity is such that practice can benefit it without too great injury to the efficiency of government. What should be emphasized in the statement of our national policy is that we wish to prepare the Filipinos for *popular* self-government. This is plain from Mr. McKinley's letter of instructions and all of his utterances." p. 7. "That policy (of President McKinley and Secretary Root) is declared to be the extension of self-government to the Philippine Islands by gradual steps from time to time as the people of the islands shall show themselves fit to receive the additional responsibility, and that policy has been consistently adhered to in the last seven years now succeeding the establishment of civil government." p. 74. "It seems to me reasonable to say that such a condition cannot be reached until at least one generation shall have been subjected to the process of primary and industrial education, and that when it is considered that the people are divided into groups speaking from ten to fifteen different dialects, and that they must acquire a common medium of communication, and that one of the civilized languages, it is not unreasonable to extend the

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sions,[193] practically identical with those of Presidents McKinley, Roosevelt, and Taft.

During all of this time, the Democratic party had been the party of opposition. In its platform of 1900 was a plank reading, "We favor an immediate declaration of the nation's purpose to give to the Filipinos: first, a stable form of government; second, independence; and third, protection from outside interference such as has been given for nearly a century to the republics of Central and South America." [194] Yet with the Democratic party in power there came no abrupt change in the Philippine policy. A statement by President Wilson, read by Governor-General Harrison in his inaugural address, was: "We regard ourselves as *trustees, acting,* not for the advantage of the United States, but *for the benefit of the people of the Philippine Islands.* Every step we take will be taken with a view to the *ultimate independence of the Islands* and as a preparation for their independence; and we hope to move toward that end as rapidly as the safety and the permanent interests of the Islands will permit." The President, again stating his Philippine policy in a message to Congress on December 2, 1913, said: "We must hold

necessary period beyond a generation." p. 74. Mr. Taft was also responsible for the motto "The Philippines for the Filipinos." Read his address, "The Duty of Americans in the Philippines." 1 Off. Gaz., Dec. 23, 1903, Supplement. See compilation of Mr. Taft's utterances on the Philippines, Hearings before the Committee on the Philippines, U. S. Senate, 63rd Congress, Third Session, pp. 400 *et seq.*

[193] See Henry C. Ide, Philippine Problems, DCXXV No. Am. Rev., Dec., 1907, p. 511; James F. Smith, The Philippines As I Saw Them, XXVII Sunset Magazine, Dec., 1911, p. 617; W. Cameron Forbes, "Our Philippine Policy," Address at 32d Lake Mohonk Conference, October 14, 1914, p. 126 of Report; Hearings before the Committee on the Philippines, U. S. Senate, 63rd Congress, Third Session, pp. 193, 194.

[194] Quoted in Latané, America as a World Power, 1897-1907, p. 129; Kalaw, The Case for the Filipinos, pp. 337, 338.

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steadily in view their ultimate independence, and we must move towards the time of that independence as steadily as the way can be cleared and the foundations thoughtfully and permanently laid." The Democratic platform of 1916 contains this plank: "We heartily indorse the provisions of the bill recently passed by the House of Representatives, further promoting self-government in the Philippine Islands as being a fulfillment of the policy declared by the Democratic party in its last national platform, and we reiterate our indorsement of the purpose of ultimate independence for the Philippine Islands expressed in the preamble of that measure." There has resulted from Democratic administration increased Filipino self-government, especially in responsible offices, and a corresponding lessening of American control, a liberal construction of what should constitute a stable government, and an acceleration of speed toward independence—all on the theory that the best way to teach the Filipinos self-government, is by the exercise of self-government—but no modification of fundamental principles.

It will, therefore, be noticed that it is, what may be termed "the compromise plan," under which in its practical application the Philippines are being administered. There is meant by this statement that there have been in the United States three schools of thought, each advocating conflicting doctrines as to the proper course to be followed in the Islands. And the middle course has been pursued. Archibald Cary Coolidge, in his Sorbonne lectures of 1906-07, carefully describes these conflicting doctrines as follows:

"The first and simplest is that of the Anti-imperialists: that the Americans should simply get out as soon as possible and hand over everything to the natives. . . . The partisans of these views . . . stand on firm moral ground in their appeal to the higher

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principles, to the sense of justice, to the old ideal of liberty, of the American people. They are derided by their opponents as visionaries, but they disturb the conscience of the nation; and their altruistic arguments are reinforced by a widespread impression that, for purely selfish reasons, the country would be better off without its Philippine encumbrance. At the other extreme from the Anti-imperialists are the more outspoken expansionists, who laugh at sentimentality, and declare that the Philippines are a possession fairly acquired and worth retaining. They admit that it is the duty of the United States to give the Islands as good government as possible, but there should be 'no nonsense about it;' they would have them ruled justly but firmly, without any pretence that the inhabitants are capable of taking more than a very small part in the work. . . . Between these two extreme schools we find the opinion of Secretary Taft and those who, from the President down, support his policy. . . . Its fundamental conception is that at the present day the people of the Islands are incapable of complete self-government, and that, as long as this continues to be true, the Americans must take a part of the burden on themselves; but that it is their bounden duty not only to develop the country and insure material prosperity, but, even more, to educate the natives, who are to be given greater liberties as fast as they show themselves worthy of them." [195]

The Republican and Democratic parties, typifying different schools of thought become unitedly American in this—As long as the Philippines are under the American flag, American sovereignty is supreme and must be recog-

[195] Coolidge, The United States as a World Power, pp. 159, 160, 162. See speech of Mr. Taft August 11, 1905, at Manila, where the same analysis is made, printed in Hearings before the Committee on the Philippines, U. S. Senate, 63rd Congress, Third Session, p. 400.

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nized. The Islands are held in trust for the people who live in them. The government of the Islands must be conducted with a primary and watchful regard for the welfare and benefit of the Filipino people. The Filipinos are to be given the largest measure of self-government that is consistent with national authority, with training in political science, and an increasing share in the government as they are found qualified. When a stable government can be established and when it is for the permanent interest of the Islands, American sovereignty will be withdrawn and the independence of the Philippine Republic recognized by the United States. The two parties slightly disagree in this—The fixing of a date for withdrawal, as also the question whether the Filipinos shall decide—those of the Republican faith generally advocating an unfixed date a generation or more away with a decision then by the Filipinos as to whether they desire complete independence—those of the Democratic faith favoring a stated or nearer date to be determined by the Congress of the United States. The necessary corollaries of absolute independence, or a protectorate, or neutralization are left unsolved with no unanimity of sentiment in either party, but with a crystallizing sentiment in favor of an unqualified withdrawal by the United States.

The foregoing was true, and in fact was written, prior to the commencement of the great European struggle. The Philippines have now become involved in the preparedness plans of the United States. Consequently a new aspect of the American Philippine policy is more consideration of the safety of the United States, than the welfare of the Filipino people. The Philippines are thought by military experts to be difficult of defense and thus a constant source of danger to the United States. Of course if possession imperils the United States it likewise imperils the Philippines, so that again we get back to the old starting point, the welfare of the Filipino

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people. The President in his message to Congress on December 7, 1915, said:

"There is another matter which seems to me to be very intimately associated with the question of national safety and preparation for defense. That is our policy towards the Philippines and the people of Porto Rico. Our treatment of them and their attitude towards us are manifestly of the first consequence in the development of our duties in the world and in getting a free hand to perform those duties. We must be free from every unnecessary burden or embarrassment; and there is no better way to be clear of embarrassment than to fulfill our promises and promote the interests of those dependent on us to the utmost. Bills for the alteration and reform of the government of the Philippines and for rendering fuller political justice to the people of Porto Rico were submitted to the Sixty-third Congress. They will be submitted also to you. I need not particularize their details. You are most of you already familiar with them. But I do recommend them to your early adoption with the sincere conviction that there are few measures you could adopt which would more serviceably clear the way for the great policies by which we wish to make good, now and always, our right to lead in enterprises of peace and good will and economic and political freedom." [195a]

Generally the Act of Congress of August 29, 1916, which we denominate the Philippine Autonomy Act, in conjunction with the fact that it was passed by both Democratic and Republican votes, may be taken to renew and state authoritatively American Philippine policy, i. e., Present autonomy and future independence—recognition

[195a] That the view which found the Philippines a weak spot in the national armour was not confined to any party but was widespread, is shown by the preachments of former President Roosevelt. See Theodore Roosevelt, America on Guard, XXXII Everybody's Magazine, January, 1915, p. 120.

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of present American sovereignty but with a desire for a future recognition of Filipino sovereignty—a non-partisan American agreement, with a wish that agitation cease, that the question be considered closed for some time, and that the Filipinos demonstrate ability to establish a stable government, when the question of complete independence will again be taken up and decided in a non-partisan manner by the Congress of the United States.

§ 80. Outline of present administration.[1]—As a further conclusion, we are in a position to give an outline (for which there is material which could be expanded into a large volume) of the present structure and functions of the Government of the Philippine Islands.

Civil administration has progressed, as we have found, through three principal stages—initial organization under the President's Instructions to the Commission, reorganization in 1905 under the Philippine Bill and an Act of the Philippine Commission (No. 1407), and now revision under the Philippine Autonomy Act and the Administrative Code. The Philippine Autonomy Act is the Act of Congress of August 29, 1916, becoming effective shortly thereafter. The Administrative Code is Act 2657 of the Philippine Legislature, effective July 1, 1916.

Insular Government.

The Insular Government is divided into the executive power, the legislative power, and the judicial power.

Executive power is vested in the Governor-General, the Vice-Governor, four executive departments, and bureaus and offices. The Governor-General and the Vice-Governor are appointed by the President of the United States by and with the advice and consent of the Senate. The

[1] See Administrative Code of the Philippine Islands, Act 2657; Handbook of the Executive Departments of the Government of the Philippine Islands.

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heads of bureaus and offices are appointed by the Governor-General with the advice and consent of the upper house of the Philippine Legislature, with the exception of the Insular Auditor and Deputy Auditor, who are appointed by the President, and the Insular Treasurer and Assistant Treasurer who are appointed by the Secretary of War,[1a] while the Director of Coast Surveys is under the direction of the United States Coast and Geodetic Survey and the Chief Quarantine Officer is under the direction of the United States Public Health Service. As a general rule, the head of a bureau is styled Director, but there are exceptions, as the Insular Collector of Customs, the Collector of Internal Revenue, the Insular Auditor, the Insular Treasurer, the Chief of Constabulary, the Chief Quarantine Officer, the Attorney-General, the Purchasing Agent, and the Executive Secretary. A Civil Service law protects the merit system.

The Governor-General[1b] is the Chief Executive of the Islands. He is charged with the executive control of the Philippine Government, subject to the approval of the Secretary of War and the President. When he is absent from the Philippine Islands, or is for any reason unable to discharge his duties, or in case of a vacancy in the office, the Vice-Governor serves as Acting Governor-General; if the Vice-Governor is likewise incapacitated, the President may designate the head of an executive department as Governor-General. The Governor-General is assisted by the Executive Secretary, the Secretary to the Governor-General, and an Aide-de-camp to the Governor-General. In addition to his general supervisory author-

[1a] While the Administrative Code so provides (sec. 1760) the Philippine Autonomy Act would seem to contemplate appointment of the Insular Treasurer and Assistant Treasurer by the Governor-General (secs. 21, 24).

[1b] See generally Barrows, The Governor-General of the Philippines, XXI Am. Hist. Rev., Jan., 1916, pp. 299-311.

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ity, the Chief Executive has various special powers and duties. A most important one is the pardoning power.[2] A function somewhat unusual under the American system is his "ordinance power." He has practically the duties of an administrative court. He appoints and removes officers. He is also considered a department head with direct control of the Executive Bureau, the Bureau of Audits, the Bureau of Civil Service, and all other unattached offices and administrative branches of the government. He has general control over the regularly organized provinces, the cities of Manila and Baguio, the Department of Mindanao and Sulu, and the municipalities. The Supreme Court of the Philippines, in considering the powers of the Governor-General and in holding him free from judicial control for his official acts, has said that "While the duties imposed upon the Governor-General of the Philippine Islands are not as great as those imposed upon the President of the United States, we think he holds a more responsible position than those held by the state Governors." [3] The Governor-General is subject to

[2] See Cabantag *v.* Wolfe (1906) 6 Phil. 273; Director of Prisons *v.* Court of First Instance (1915) XIII O. G. 477; U. S. *v.* Filart (1915) XIII O. G. 778; IV Op. Atty. Gen. P. I. 539; Op. Atty. Gen. P. I., Nov. 14, 1913, quoting from the leading case of *ex parte* Garland (1867) 4 Wall. 333, 560, 18 L. Ed. 366 as follows: "A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

[3] Severino *v.* Governor-General (1910) 16 Phil. 366, 385. See also Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534.

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the restraints of removal or reversal by the President or Secretary of War and the rebuke of an informed and courageous public opinion.

The four executive departments are the Department of Public Instruction, the Department of the Interior, the Department of Commerce and Police, and the Department of Finance and Justice. The Philippine Legislature is empowered to increase or abolish any of the executive departments except the Department of Public Instruction. The Vice-Governor is the head of the latter. Each department is under the executive control of the respective Secretaries of departments, who exercise their functions subject to the general supervision of the Governor-General. Excepting the Secretary of Public Instruction, they are appointed by the Governor-General with the consent of the upper house of the Legislature. When a Secretary of any department is unable from absence or disability to discharge his duties or when the position is vacant, the Governor-General performs the functions of the office, or designates another to do so temporarily. The Bureau of Non-Christian Tribes is specifically established by Congress with general supervision over the public affairs of the inhabitants of the territory represented in the Legislature by appointive Senators and Representatives; it is embraced in a department designated by the Governor-General. The Bureau of Education and the Bureau of Health (Philippine Health Service) must be under the Department of Public Instruction. Other bureaus are arranged in the departments by the Legislature. Bureaus are usually divided into divisions or sections. Various other institutions are also in existence. Of these there can be mentioned the University of the Philippines, the Philippine National Library, the Philippine National Bank, the Board of Public Utility Commissioners, the Code Committee, the Emergency Board, the Public Welfare Board, the Board of Marine Examiners and the

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boards for the examination of the different professions, the Efficiency Board, the Central Sugar Board, and the New Industries Board. The central government publishes an Official Gazette weekly in English and Spanish.[4]

Elections to fill all elective positions are held on the first Tuesday of June of every leap year.

Legislative power is vested in the Philippine Legislature consisting of two houses as separate, co-ordinate bodies, the Senate and the House of Representatives (Philippine Assembly). The Legislature convenes in regular session on the 16th day of October of every year, unless a holiday, then on the first subsequent secular day. It continues in session not exceeding one hundred days, Sundays not included. The Legislature may be called in special session at any time by the Governor-General for a period not longer than thirty days, exclusive of Sundays. When lawfully convened, neither House can adjourn without the consent of the other for more than three days, exclusive of Sundays and holidays. Either House may require the

[4] The Official Gazette was the successor of the *Gaceta de Manila,* commenced in 1861 and continuing to the end of Spanish rule. This was the official journal of the Spanish Government, containing all acts of legislation, orders of the Governors, pastoral letters, and other official matters. The first number of the Official Gazette appeared on September 10, 1902. It then gave an indication of future policy; it contained—1. Current public laws; 2. Executive Orders of the Civil Governor; 3. A decision of the Supreme Court; 4. Opinions by the Attorney-General; and 5. Various administrative circulars. Later in a "preliminary number" issued on January 1, 1903, there was printed "the General Orders of public interest, the proclamations, and notices of the Military Government; the President's Instructions to the Commission; the announcement, proclamations, and important Acts of the Philippine Commission, and other matter of a public nature issued prior to the date of establishing the Official Gazette relative to the establishment and development of the United States government in the Philippine Islands."

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assistance of any officer of the government for purposes of inquiry or investigation; it can punish for contempt.[5] There is a Division of Legislative Records.

The House of Representatives (Philippine Assembly) is the popular branch of the Legislature. It consists of ninety members, eighty-one elected and nine appointed by the Governor-General to represent the Mountain Province, Nueva Vizcaya, and the Department of Mindanao and Sulu. The official term is three years. The House chooses its Speaker, Secretary, and other officers. Organization is much the same as in the several states or in Congress. An unusual feature is the practice of calling a caucus of all members irrespective of party affiliations prior to formal assembly.[6]

The Philippine Senate succeeds the Philippine Commission. The Islands are divided into twelve senate districts, each with two Senators. All are elected except two to represent the Mountain Province, Baguio, Nueva Vizcaya, and the Department of Mindanao and Sulu,

[5] "The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has, from time immemorial, been deemed necessary, and has been exercised by legislative bodies. . . . An investigation instituted for the mere sake of investigation, or for political purposes not connected with intended legislation, or with any of the other matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offenses, and no legislation was contemplated, but the proceeding must necessarily end with the investigation, would not, in our judgment, be a legislative proceeding, or give to either house jurisdiction to compel the attendance of witnesses, or punish them for refusing to attend." People ex rel. McDonald *v.* Keeler (1885) 99 N. Y. 463, 2 N. E. 615, 52 Am. Rep. 49. See Op. Atty. Gen. P. I. Nov. 26, 1910.

[6] See Commissioner Singson, The Filipino Legislator; His Difficulties and Successes, I Philippine Law Journal, August, 1914, p. 12, meeting criticism of this practice.

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who are appointed by the Governor-General. Qualifications for office are higher than for the House. At the first election, Senators are chosen for terms of three or six years, thereafter for six years. It also chooses a presiding officer and other officers.

Every bill or joint resolution which has passed both houses is presented to the Governor-General for approval or veto. If approved, the bill or resolution becomes a law. The Governor-General can veto particular items in appropriation bills. If disapproved, the respective houses can reconsider the measure and by a two-thirds vote repass it. If the Governor-General shall not then approve, the President of the United States has final and absolute power of approval or disapproval. Bills relating to public lands, timber, mining, the tariff, immigration, and the currency require the approval of the President in all cases.

The Supreme Court in the Bull case held that the power of the Philippine Legislature was similar to that of a State legislature. Consequently, the rule is: "An Act of the legislative authority of the Philippine government which has not been expressly disapproved by Congress is valid unless its subject-matter has been covered by congressional legislation, or its enactment forbidden by some provision of the organic laws. The legislative power of the government of the Philippines is granted in general terms subject to specific limitations."[7] The Philip-

[7] U. S. *v.* Bull (1910) 15 Phil. 7, 29. In accord Ocampo *v.* Cabangis (1910) 15 Phil. 631; McGirr *v.* Hamilton (1915) XIII O. G. 879; Elkins *v.* People (1909) 5 Porto Rico Fed. 103; 4 Encyc. U. S. Supreme Court Reports, p. 121, citing numerous cases. "The Philippine Commission possesses general powers of legislation for the Islands, and its laws are valid unless they are prohibited by some act of Congress, some provision of the Constitution, or some provision of a treaty." Gasper *v.* Molina (1905) 5 Phil. 197, 201. "While the statement has its exceptions, we believe, generally speaking that the United States Philippine Commission, and now the

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pine Autonomy Act confirms the judicial view by granting to the Philippine Legislature "general legislative power" except as therein provided (secs. 7, 8, 12). The Legislature is also given certain specific powers within the limitations named. Thus it determines the salaries of all offi-

Philippine Legislature, may legislate and adopt laws upon all subjects not expressly prohibited by the Organic Law (Act of Congress of July 1, 1902) or expressly reserved to Congress. Congress did not attempt to say to the Philippine Legislature what laws it might adopt. Congress contented itself by expressly indicating what laws the Legislature should *not* adopt, with the requirement that all laws adopted should be reported to it, and with the implied reservation of the right to nullify such laws as might not meet with its approval." U. S. *v.* Pompeya (1915) XIII O. G. 1684. But compare with Weigall *v.* Shuster (1908) 11 Phil. 340; Snow *v.* U. S. (1873) 18 Wall. 317, 21 L. Ed. 784; Territory of Utah *v.* Daniels (1889) 6 Utah, 288, 5 L.R.A. 444; 38 Cyc. p. 199 note. "The Act of Congress was the creator of the Commission and indeed of the government of these Islands, which is the creature of its creator. Its powers are defined, prescribed and limited by the Act which created it, and by such other lawful acts of its creator as may further define, prescribe, limit, or expand these powers. It cannot lawfully transcend or infringe upon the limits thus prescribed, and any Act of the Commission repugnant to the Act of Congress which created it, or which is repugnant to any other lawful Act of its creator defining, prescribing or limiting its authority is void and invalid. . . . The Act of the Commission in so far as it is in conflict with or in any wise repugnant to the various Acts dealing with the same subject matter must be held to be void and of no effect. Paraphrasing slightly the language used in the early case of Kemper *v.* Hawkins (1 Va. Cases, 20-24), it may be said that the Acts of the Congress of the United States are to the Commission, or rather to all the departments of the Philippine Government, what a law is to individuals; nay, they constitute not only a rule of action to the various branches of the government, but it is from them that the very existence of the power of the government flows, and it is by virtue of the Acts of Congress that the powers (or portions of the right to govern) which may have been committed to this government are prescribed. The Act of Congress was the Commission's commission; nay, it was its creator." *In Re* Guariña (1913) 24 Phil. 37, 44, 45.

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cials in the insular government not appointed by the President, but the salaries of the latter—Governor-General $18,000 (₱36,000), Vice Governor $10,000 (₱20,000), Chief Justice $8,000 (₱16,000) Associate Justices, $7,500 each (₱15,000 each), Auditor $6,000 (₱12,000) and Deputy Auditor $3,000 (₱6,000) must be provided for. In exercising these general or specific powers the purpose of the legislator should be to register not what the will of the people commands, but what the reason of the people should demand—to act not as a mere delegate but as a fully empowered attorney for his constituents and the people at large.[8] In this connection President Wilson says of the responsibilities of the legislator: "The modern representative has to judge of the gravest affairs of government, and has to judge as an originator of policies. It is his duty to adjust every weighty plan, preside over every important reform, provide for every passing need of the state. All the motive power of government rests with him. His task, therefore, is as complex as the task of governing, and the task of governing is as complex as is the play of economic and social forces over which it has to preside." [9]

Judicial power [10] is vested in the following courts: The United States Supreme Court on appeal, Supreme Court of the Philippine Islands, Courts of First Instance, justice of the peace courts, the municipal court of the city of Manila, and township courts. The Court of Customs Appeals, the Land Registration Court, and Tribal Ward

[8] See Burgess, Political Science and Constitutional Law, Vol. II, p. 106.

[9] Woodrow Wilson, The State, p. 562.

[10] See George R. Harvey, The Administration of Justice in the Philippines, I Philippine Law Journal, February, 1915, p. 330; Former Secretary of Finance and Justice Araneta, Appendix, Vol. II, Worcester, The Philippines Past and Present, p. 988.

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Courts are abolished.[11] The Philippine Courts are in a broad sense constitutional courts.[12] They are legally and properly constituted, and their decisions, adjudications, judgments, and decrees are valid, binding, and enforceable throughout the Archipelago.[13] The whole judicial system is modeled upon Anglo-American precedents.[14] English and Spanish are the official languages of the courts.

The courts of superior jurisdiction are the Supreme Court and the Courts of First Instance, and, in a sense, the Supreme Court of the United States.

The Supreme Court of the United States has jurisdiction on appeal or writ of error of final judgments and decrees of the Supreme Court of the Philippine Islands in the following cases: 1. In which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved. 2. Or in which the value in controversy exceeds $25,000 (₱50,000). 3. Or in which the title or possession of real estate exceeding in value the sum of $25,000 (₱50,000) is involved or brought in question. The procedure as far as applicable is that regulating district courts of the United States.[15] Cases

[11] The organization of tribal ward courts was provided in Acts of the Legislative Council of the Moro Province.

[12] Ocampo *v.* Cabangis (1910) 15 Phil. 625, 631.

[13] U. S. *v.* Beecham (1910) 15 Phil. 273.

[14] Alzua *v.* Johnson (1912) 21 Phil. 308; M. E. R. & L. Co. *v.* Del Rosario (1912) 22 Phil. 433; Conchada *v.* Director of Prisons (1915) XIII O. G. 1478, holding Act 2347 valid.

[15] See Philippine Bill, sec. 10; The U. S. Judicial Code (1911) sec. 248; Philippine Autonomy Act, sec. 27. The following cases have concerned appeals to the United States Supreme Court: Cortes *v.* Yu-Tivo (1903) 2 Phil. 24; Obras Pias *v.* Regidor (1903) 2 Phil. 151; Warner *v.* 771 Objectors (1905) 5 Phil. 330; U. S. *v.* Rosa (1909) 14 Phil. 394; De la Rama *v.* De la Rama (1906) 201 U. S. 303, 11 Phil. 746; Behn Meyer *v.* Campbell (1907) 205 U. S. 403, 11 Phil. 769; Paraiso *v.* U. S. (1907) 207 U. S. 368, 11 Phil. 799: Tiglao *v.* Insular Government (1910) 215 U. S. 410, 54 L. Ed. 257;

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which have gone from the Supreme Court of the Philippines to the United States Supreme Court have shown a lack of knowledge of Federal procedure on the part of attorneys.

The Supreme Court of the Philippines consists of seven judges, the Chief Justice and six Associate Justices. They

Martinez *v.* International Banking Corporation (1911) 220 U. S. 214, 55 L. Ed. 438; Enriquez *v.* Enriquez (1911) 222 U. S. 123, 56 L. Ed. 122; Enriquez *v.* Enriquez No. 2 (1911) 222 U. S. 127, 56 L. Ed. 124; Beecham *v.* U. S. (1911) 223 U. S. 708, 56 L. Ed. 623; Harty *v.* Municipality of Victoria (1912) 226 U. S. 12, 57 L. Ed. 103; Alzua *v.* Johnson (1913) 231 U. S. 106, 58 L. Ed. 142; Ocampo *v.* U. S. (1914) 234 U. S. 91, 58 L. Ed. 1231; Gsell *v.* Collector of Customs (1915) 237 U. S. 93. "We follow and sustain the local law as applied by the court below unless we are constrained to the contrary by a sense of clear error committed." Villanueva *v.* Villanueva (1915) 239 U. S. 293. "Whether prohibition is technically the proper remedy, historically speaking, we need not inquire. On such a matter we should not interfere with local practice except for good cause shown. In substance the decision of the Supreme Court was right." Tiaco *v.* Forbes (1913) 228 U. S. 549, 57 L. Ed. 960.

"It is admitted, . . . that the questions presented by the third and fourth assignments of error were not made in the courts below, but a consideration of them is invoked under rule 35, which provides that this court, 'at its optoin, may notice a plain error not assigned.'

"It is objected on the other side that Paraiso *v.* United States, 207 U. S. 368, 52 L. Ed. 249, 28 Sup. Ct. Rep. 127, stands in the way. But the rule is not altogether controlled by precedent. It confers a discretion that may be exercised at any time, no matter what may have been done at some other time. It is true we declined to exercise it in Paraiso *v.* United States, but we exercised it in Wilborg *v.* United States, 163 U. S. 632, 658, 41 L. Ed. 289, 298, 16 Sup. Ct. Rep. 1127, 1197; Clyatt *v.* United States, 197 U. S. 207, 221, 49 L. Ed. 726, 731, 25 Sup. Ct. Rep. 429, and Crawford *v.* United States, 212 U. S. 183, 53 L. Ed. 465, 29 Sup. Ct. Rep. 260, 15 A. & E. Ann. Cas. 392. It may be said, however, that Paraiso *v.* United States is more directly applicable, as it was concerned with the same kind of a crime as that in the case at bar, and that it was contended there, as here, that the amount of fine and imprisonment

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are appointed by the President of the United States, by and with the consent of the Senate, and serve during good behavior. The Court is in regular session from the first of July to the first of April of each year. The calendar is called for two terms of court, the first commencing on the second Monday of January and the second on the second Monday of July. During vacation periods one of the Justices remains on duty. The Supreme Court sits in banc, the Chief Justice presiding. Five of the Justices constitute a quorum for the transaction of business. The concurrence of at least four members of the Court is necessary to the pronouncement of a judgment. The clerk of the Supreme Court and the reporter of the Supreme Court are its principal ministerial officials. The Court exercises both original and appellate jurisdiction. The United States Supreme Court has held in this connection that the Supreme Court of the Philippines hears an appeal as a trial *de novo,* and has the power to re-examine the law and the facts on the record; that in reviewing the judgment of the Court of First Instance in a criminal case, it may determine for itself the guilt or innocence of the defendant upon proofs presented at the trial; and that in a criminal case, it may increase sentence on appeal by the accused, but has no jurisdiction on appeal by the government after acquittal in the trial court.[16]

imposed inflicted a cruel and unusual punishment. It may be that we were not sufficiently impressed with the importance of those contentions, or saw in the circumstances of the case no reason to exercise our right of review under rule 35. As we have already said, the rule is not a rigid one, and we have less reluctance to disregard prior examples in criminal cases than in civil cases, and less reluctance to act under it when rights are asserted which are of such high character as to find expression and sanction in the Constitution or Bill of Rights." Weems *v.* United States (1910) 217 U. S. 362, 54 L. Ed. 796.

[16] Serra *v.* Mortiga (1907) 204 U. S. 470, 11 Phil. 762; Pendleton *v.* U. S. (1909) 216 U. S. 305, 54 L. Ed. 491; Kepner *v.* U. S.

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Judges of First Instance and Auxiliary Judges are appointed by the Governor-General with the advice and consent of the upper branch of the Philippine Legislature to serve until they shall reach the age of sixty-five years. Twenty-six judicial districts are constituted. One Judge of First Instance is assigned to each district except the city of Manila which has four branches. Seven Auxiliary Judges of First Instance are designated for as many groups. Their functions are to assist the Judges of First Instance, to substitute for a Judge of First Instance, and temporarily to supply any vacancy that may occur. Court is held at the provincial capital, except when otherwise provided. Sessions are convened on all week days, when there are cases ready for trial or other court business to be dispatched. The Court is in regular session except during the months of May and June during which judges are assigned to vacation duty. Judges of First Instance may be removed from office pursuant to prescribed procedure. The Governor-General may also temporarily suspend a Judge. Each court has a clerk of court, a sheriff, and a *fiscal*. Its judisdiction is both original and appellate.

One justice of the peace and one auxiliary justice of the peace are appointed by the Governor-General for each municipality, township, and municipal district, although the territorial jurisdiction of any justice may be made to extend over any number of municipalities, townships, or districts. A justice of the peace holds office during good behavior. Qualifications are fixed with special examinations provided for. They act under the supervision of the Judge of First Instance who makes recommendations as to suspension, removal, or appointment to the Governor-General. Certain officials serve as *ex-officio* justices of the peace. The powers of the justice of the peace are

(1904) 195 U. S. 100, 11 Phil. 669; Trono *v.* U. S. (1905) 197 U. S. 521, 11 Phil. 726.

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limited, those at provincial capitals having a more extensive jurisdiction.[17] Salaries vary for the four classes and for provincial capitals from ₱50 a month to ₱300 a month (Manila).

The municipal court of the city of Manila with a Municipal Judge has principally criminal jurisdiction.[18] Township courts have even more limited jurisdiction than justice of the peace courts.

The jurisdiction of the courts is fixed by sections 26 and 27 of the Philippine Autonomy Act in connection with Act 136 of the Philippine Commission. The Legislature can add to but not diminish this jurisdiction.[19] The jurisdiction of the several courts is too extensive and complicated to be here described. The procedure of the courts is naturally that known as Code Pleading. In addition to the simple rules of the Remedial Code, the courts will therefore adopt liberal views as to pleading. The Supreme Court says: "The whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. The most perfect procedure that can be devised is that which gives opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice." [20] The Islands also possess a Torrens System and a Cadastral Survey Act.[21]

[17] Narcida *v.* Bowen (1912) 22 Phil. 365; Tuason *v.* Crossfield (1915) XIII O. G. 1043.

[18] See Davis *v.* Director of Prisons (1910) 17 Phil. 168.

[19] Weigall *v.* Shuster (1908) 11 Phil. 341; Barrameda *v.* Moir (1913) 25 Phil. 44, and other cases.

[20] Manila Railroad Co. v. Atty. Gen. (1911) 20 Phil. 523, 529. See also Lizarraga Hermanos *v.* Yap-Tico (1913) 24 Phil. 504, 513.

[21] "The sole purpose of the Legislature . . . was to bring the land titles of the Philippine Islands under one comprehensive and harmonious system, the cardinal features of which are indefeasibility of title and the intervention of the state as a prerequisite to the creation and transfer of titles and interests, with

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The General Land Registration Office is maintained in the city of Manila under the supervision of the Judge of the fourth branch of the Court of First Instance. The office has a chief, an assistant chief, and a chief surveyor. The office is the head of the clerical and archival system of the Courts of First Instance. The chief of the office is deemed to be clerk of the fourth branch of the Court of First Instance of the city of Manila, and the clerk of all other Courts of First Instance in so far as concerns matters relating to registration of land. Regulations are issued by him.

The Attorney-General is the principal law officer of the government. It is his duty to represent the government of the Philippine Islands in all cases civil and criminal to which the government or any officer thereof in his official capacity is a party.[22] It is also his duty to render official opinions to the following: 1. The Chief Executive. 2. The President of the upper house of the Philippine Legislature. 3. The Speaker of the House of Representatives (Philippine Assembly). 4. The heads of Executive Departments. 5. The Chiefs of Insular Bureaus. 6. The trustee of any government institution. 7. Provincial *fiscals*.[23] The Department of Mindanao and Sulu has an Attorney and the city of Manila and every province a *fiscal*[24]—in Baguio known as the city attorney. All are

the resultant increase in the use of land as a business asset by reason of the greater certainty and security of title." City of Manila *v.* Lack (1911) 19 Phil. 324, 328. See also Alba *v.* De la Cruz (1910) 17 Phil. 49; De Jesus *v.* City of Manila (1914) XIII O. G. 131; Legarda *v.* Saleeby (1915) XIII O. G. 2118; Altavas, Systems of Land Registration in the Philippines, 3 Philippine Law Review, January, 1914, p. 126.

[22] Jua *v.* The Insular Collector of Customs (1915) XIII O. G. 2124.

[23] Op. Atty. Gen. P. I. Dec. 2, 1910; sec. 1281, Adm. Code.

[24] See Malcom's Compiled and Annotated Provincial Government Act, sec. 11 and extensive notes.

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appointed by the Governor-General and serve under the supervision of the Attorney-General. They try criminal cases, represent the province or municipality or its officers in civil actions, and act as legal adviser to the provincial and municipal authorities.

In the city of Manila and each of the several provinces there is a sheriff. In the city of Manila and in the provinces of the Department of Mindanao and Sulu, the functions of the sheriff are exercised by the respective clerks of the Courts of First Instance. Excepting Manila sheriffs are paid by fees.

A register of deeds is maintained for the city of Manila and the several provinces with special provision for the Mountain Province. Usually the *fiscal* performs the duties. Judges of First Instance have supervision over them. Doubtful questions may be referred to the Judge of the fourth branch of the city of Manila for an order.

Notaries public [25] in the provinces are appointed by the Judge of First Instance of the province for a term of two years, there being at least one for each municipality. In Manila they are appointed for the same period by the Supreme Court. Many officers act as notaries public *ex officio*. The Notarial Law governs their powers and duties.

The Government of the Philippine Islands recognizes five distinct units, [26] outside of the Insular Government, for administrative purposes—Provincial Government, dividing into regularly and specially organized provinces; Municipal Government, dividing into municipalities, townships, and settlements; the city of Manila; the city of Baguio; and the Department of Mindanao and Sulu.

[25] See Feria, *Manual de los Notarios Publicos.*

[26] Acts Nos. 82, 83, 183, 787, 1396, 1397, 1963, 2408,—Administrative Code.

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Provincial Government.[27]

Provinces are the units of government next below the Insular Government. They are of two classes: regularly organized provinces [28] and specially organized provinces. The latter are Batanes, Mindoro, Mountain Province, Nueva Vizcaya, and Palawan. The regularly organized provinces include all provinces except the specially organized provinces and the provinces in the Department of Mindanao and Sulu. The distinction between the two classes of provincial governments is mainly that the regularly organized provinces are given more popular government than those specially organized. The chief officers in the province are the provincial governor, the superior administrative officer of the province with manifold duties, the provincial treasurer, who is the superior financial officer of the province, and two members of the provincial board. The provincial governor and the members of the provincial board, known as "vocales," are elected for a term of four years. They constitute the provincial board, which has a secretary. The provincial treasurer is appointed by the Governor-General. Lieutenant-governors and other officials are provided for the sub-provinces. Other provincial officers, most of whom are under Insular control, are provincial *fiscals,* provincial assessors, division superintendents of schools, district auditors, district health officers, district engineers,

[27] For detailed description of regularly organized provinces see Malcolm's Compiled and Annotated Provincial Government Act. For detailed description of specially organized provinces see Worcester, The Philippines Past and Present, Vol. II, Chs. 21, 22.

[28] The regularly organized provinces are Albay, Ambos Camarines, Antique, Bataan, Batangas, Bohol, Bulacan, Cagayan, Capiz, Cavite, Cebu, Ilocos Norte, Ilocos Sur, Iloilo, Isabela, Laguna, La Union, Leyte, Misamis, Nueva Ecija, Occidental Negros, Oriental Negros, Pampanga, Pangasinan, Rizal, Samar, Sorsogon, Surigao, Tarlac, Tayabas, Zambales.

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internal revenue agents, postal inspectors, mining recorders, sheriffs, registers of deeds, clerks of court, and local land officers.

Municipal Government.[29]

The Municipal Law succeeding the Municipal Code (Act 82, as amended) governs municipalities. Four classes of municipalities according to population are recognized. The Township Law succeeding the Township Government Act (Act 1397, as amended) governs the townships and settlements. It includes special provisions for elections. Settlements may be established in localities where the majority of the inhabitants have not progressed sufficiently in civilization or are so remote or small in numbers as to make organization inadvisable. The townships and settlements may elect a popular representative to lay their needs before the higher authorities. Municipalities and townships are both subdivided into *barrios*. The chief officers of the municipalities and townships are the president, vice-president, treasurer, secretary, and councilors, all elected excepting the secretary and treasurer—and in a sense municipal boards of health or municipal sanitary divisions.

City of Manila.

The city of Manila is granted a special charter. The Administrative Code changes its government from the commission form, modeled somewhat on that of the District of Columbia, to one of checks and balances. The government is vested in a Mayor and a Municipal Board. The Mayor is appointed by the Governor-General with the consent of the upper house of the Philippine Legis-

[29] See sec. 144 *infra;* Malcolm's Compiled and Annotated Municipal Code; and Villamor, *Prontuario de Practica Administrativa Municipal y Provincial.*

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lature for a term of four years. He is the chief executive officer of the city. The Municipal Board consists of ten elective members holding office for four years. It is the legislative body of the city with the Mayor having the right of veto. There are four city departments: Department of Engineering and Public Works in charge of the City Engineer; Police Department in charge of the Chief of Police; Law Department in charge of the *fiscal;* and Fire Department in charge of a Chief. Municipal duties are also performed by a number of Insular Bureaus. A Board of Tax Appeals of seven members is appointed by the Governor-General on the first day of January of each odd-numbered year.

City of Baguio.

The city of Baguio is in a way regarded as a summer capital for the Philippines. Consequently, it is granted a special charter. Its government is vested in a Mayor, Vice-Mayor (both appointed by the Governor-General) and a City Council. The Mayor is given various powers and duties including membership in the council. The Vice-Mayor is a member of the City Council and acts for the Mayor in his absence. The Council is the legislative body and is composed of the Mayor, Vice-Mayor, and three other members—two elected by the voters of Baguio and one appointed by the Governor-General. It has been held that the council is not clothed with the powers conferred upon township councils.[30] An advisory council of five Igorots is constituted. The other city officers are the city secretary, city health officer, city engineer, city attorney, assistant city attorney, chief of police, city treasurer, city assessor, and the board of tax appeals.

[30] U. S. *v.* Pacis (1915) XIII O. G. 1778.

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Department of Mindanao and Sulu.

The Department of Mindanao and Sulu with a civil administration succeeds the Moro Province with *quasi*-military government. Since the majority of the inhabitants are non-Christians recognizing the authority of their datos, the Department is given a special organic law allowing practical freedom from Insular control.[81] The Department consists of the entire Island of Mindanao, excluding only the Provinces of Misamis and Surigao, together with the Sulu Archipelago, and including the islands known as Jolo Group and the Tawi Tawi Group.

The chief department officers are the Governor, Secretary, Attorney, Treasurer, and Delegate. These officials constitute the Administrative Council which is an advisory board to the Governor with additional powers. All are appointed by the Governor-General. Other officers are the Senior Supervising Engineer, Superintendent of Schools, and the Chief Health Officer. The Department is divided into the Provinces of Agusan, Bukidnon, Cotobato, Davao, Lanao, Sulu, and Zamboanga. Each province has a provincial governor, provincial secretary-treasurer, third member of the provincial board, provincial *fiscal,* and a provincial health officer—

[81] "The government before the arrival of the Americans, as also afterward, except wherein it is modified by the American administration, was tribal and patriarchal. The population of the Moro country was not numerous and was scattered as compared with the other islands of the Archipelago. This population was governed by numerous petty dattos. The most powerful of these dattos did not have under his jurisdiction more than 1,000 men. Each datto had certain territorial jurisdiction, or a certain amount of land under his control. Within this land he and his *sacopes,* slaves, and subjects constructed a fortress called a *cotta* and inside and around the *cotta,* he and his subjects lived. They took refuge in the fortress to defend themselves when attacked. There were conflicts of territorial jurisdiction between the various dattos." Cacho *v.* The Government of the United States (1914) 28 Phil. 616.

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all at present appointed, although provision is made for the future elections of provincial governors and third members. The provincial board consists of the governor, secretary-treasurer, and the third member. Under the provinces are municipal corporations with provision made for special municipal governments.

Finance.[32]

Revenues are derived mainly from customs duties, internal revenue taxes, income taxes authorized by an Act of Congress, and various municipal sources of revenue. The per capita taxation for all purposes is about five pesos, as against three times as much for the United States.[33] Trade (imports and exports) annually approximates two hundred forty million pesos. The government is run without financial assistance from the United States. The total bonded indebtedness of the Philippines could be not to exceed thirty million pesos, exclusive of friar land bonds; actually at this writing it is thirty-two million

[32] See Report of the Auditor for the fiscal year 1915; Report, Chief, Bureau of Insular Affairs for 1915.

[33] "The people of the Philippines should not hesitate . . . to impose upon themselves a just burden of taxation; without adequate revenues, there can be no genuine material progress. In the Philippines at present the per capita taxation of the Insular Government is 2.83; per capita taxes imposed by the central governments of other countries are far greater. For example, the per capita tax in Belgium is ₱17.96; in Japan, ₱10.00; in France, ₱39.75; in Spain, ₱22.71; in Turkey, ₱8.24; in Great Britain, ₱34.00; and in the United States, ₱14.22. It may thus be seen that the Philippine government could fairly impose some additional taxation without injustice to any inhabitant, and with assurance of benefits to the whole population. Such increased taxation is essential not only to meet the present situation, but also to care for the future needs of the government; all who desire the success of the Filipino people under more extended powers of self-government should unite to provide for the future sufficient revenues and resources." From Message of Governor-General Harrison, Oct. 16, 1914.

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two hundred fifty thousand pesos, including fourteen million friar land bonds, an insignificant per capita debt of three pesos.[34] Appropriations totalling about thirty million pesos based on a budget prepared by the Executive Secretary and submitted by the Governor-General are made annually by the Philippine Legislature. An Emergency Board sits between legislative sessions. The fiscal year coincides with the calendar year. The pre-audit system is in force. The country is on a gold basis with a gold dollar equivalent to one-half of the United States gold dollar as the theoretical

[34] "The bonded indebtedness of the Philippine government at present is limited to two issues, the friar-land bonds, $7,000,000, and the public works permanent improvement bonds, $5,000,000, while municipal bonds have been issued only for the city of Manila, $4,000,000, and the City of Cebu, $125,000 (total $16,125,000). The following table shows comparatively the per capita debts of various countries, many of which must be considered less prepared than the Philippines to support the burdens shown:

Counties.	Per capita debt.	Per capita interest.
New Zealand	$363.05	$11.58
Uruguay	124.81	7.67
Argentina	91.50	4.38
Chili	47.10	1.93
Servia	44.88	2.23
Egypt	40.95	1.56
Brazil	38.60	1.36
Cuba	28.76	2.01
Japan	26.00	1.45
Haiti	24.05	1.26
Turkey	22.95	3.21
Santo Domingo	19.97	1.78
Mexico	14.50	.87
Venezuela	14.42	.72
United States	10.88	.23
Ceylon	6.54	.34
Colombia	5.26	.30
Philippine Islands	1.50	.06

Report, Chief, Bureau of Insular Affairs, 1912; *Id.* 1915, p. 10.

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unit of value, and with a gold standard reserve of something over eighteen million pesos.[35] The circulating medium is silver and paper. The money in circulation is over fifty million pesos. Treasury deposits are made with designated banks in the Philippines and the United States. A Philippine National Bank absorbing the Agricultural Bank has just been organized. The Philippine Postal Savings Bank antedates those of the United States.

Public Order.

Public order is maintained by the United States Army and Navy, the Philippine Constabulary, and the municipal police. The United States Army constitutes the Philippine Department and with the Filipino Scouts totals about seventeen thousand men.[36] The Navy has stations at Cavite and Olongapo. Both the Army and the Navy have military reservations. The Governor-General is empowered to call upon the commanders of the military and naval forces of the United States to prevent or suppress violence, invasion, or insurrection. The Constabulary is a general police force under military discipline.[37] It numbers about five thousand. Its work is not confined

[35] See article by J. L. Manning, Acting Insular Treasurer, entitled Our Currency System, in Cablenews-American, Yearly Review Number, 1911, p. 40; Testimony of Charles A. Conant, George E. Roberts, Director of the Mint, and others before the Committee on Insular Affairs, 57th Congress.

[36] See article by Col. H. O. H. Heistand in Cablenews-American, Yearly Review Number, 1911, pp. 28, 40; Tan Te *v.* Bell (1914) 27 Phil. 354; Davis, Military Law of the United States, 3d Ed.; Berkhimer, Military Government and Martial Law; Carter, The American Army, pp. 90-93. The Philippine Scouts are an integral part of the regular army. Atkinson *v.* Stewart (1912) 23 Phil. 405.

[37] See article by Col. J. G. Harboard, Asst. Director, Philippine Constabulary, entitled The Constabulary, 1910-1911, in Cablenews-American, Yearly Review Number, 1911, pp. 35, 118; Constabulary Manual; Ch. 32, Adm. Code.

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to police matters, but includes such diverse functions as emergency, fire, quarantine, and agricultural duties. Each municipality possesses a police force [38] varying in numbers and efficiency, Manila having the most numerous and best. The reformatory system with industrial training is the basis of the penal law. The prisons are Bilibid Prison, Iwahig Penal Colony, San Ramón Penal Farm, and provincial and municipal jails.

Education.

The public school system [39] begun by the military was permanently established under Act 74, the School Law. The Director of Education with two assistants is in charge. Under them the Islands are divided into thirty-seven divisions, each with a superintendent of schools. In turn the provincial divisions are divided into districts, each with a supervising teacher. The number of scholars attending the public schools is over half a million. The teachers number about ten thousand. Twenty-one per cent of the government revenues are spent for purposes of education. Private individuals also donate money, materials, labor, and land for the schools. There are three types of instruction: primary, intermediate, and secondary, the latter including thirty-five provincial high schools and eighteen provincial trade schools. The more

[38] See article by Col. Williams C. Rivers, Assistant Director, Philippine Constabulary, entitled Municipal Police, in Cablenews-American, Yearly Review Number, 1911, p. 36.

[39] See last Annual Report of the Director of Education, 1915; Report of the Secretary of Public Instruction, 1914, in Report of the Philippine Commission, same year; Service Manual of the Bureau of Education; Charles H. Magee, The Philippine Public Schools, I. Philippine Review, Jan., 1916, p. 43; David P. Barrows, Education and Social Progress in the Philippines, XXX Annals American Academy, Political and Social Science, July, 1907, p. 69; Charles F. Thwing, Education in the Far East, pp. 246 *et seq.*

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important of the schools provided for special vocational purposes are the Philippine Normal School, the Philippine School of Arts and Trades, the Philippine Nautical School, the Philippine School of Commerce, the School for the Deaf and Blind, the School of Household Industries, and the Central Luzon Agricultural School. Other branches of the Government also have educational features—the Weather Bureau with its famous Observatory, the Bureau of Science with its museum, laboratories, and aquarium, the Philippine Health Service with its hospitals and sanitary commissions, the Bureau of Prisons with practical training for the inmates, the Bureau of Lands with instruction in surveying, the Bureau of Printing with apprentice instruction in the art of printing, the Philippine General Hospital with a school for nursing and midwifery, the Bureau of Agriculture with agricultural demonstration and extension, the Bureau of Constabulary with an Academy for Officers of the Philippine Constabulary, and the Bureau of Forestry with a forestry school. Indeed, there is hardly any part of the government but has, in some way, educational purposes. At the summit of public instruction, and separate from the Bureau of Education, is the University of the Philippines,[40] which offers opportunities for higher education. It includes the Colleges of Medicine and Surgery, Agriculture, Liberal Arts, Engineering, Veterinary Science, and Law, the Schools of Fine Arts, Pharmacy, and Education, the Forest School, and the Graduate School of Tropical Medicine and Public Health. The governing body is the Board of Regents with the Secretary of Public Instruction as Chairman *ex officio,* and with the President

[40] See University Catalogue for historical sketch; Austin Craig, The History of the University of the Philippines, in Builders of a Nation, pp. 87-92; Lawrence E. Griffin, The University of the Philippines, in Cablenews-American, Yearly Review Number, 1911, pp. 79, 106.

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of the University in direct charge. Over two thousand students are enrolled.

Many private schools [41] exist. Some are small institutions. Others are conducted under the auspices of the churches. The more important of the private schools having governmental recognition are the University of Santo Tomás, Ateneo de Manila, Silliman Institute, San Juan de Letran, Assumption College, Sta. Escolastica College, Centro Escolar de Señoritas, Sta. Isabel College, Instituto de Mujeres, Bishop Brent's School at Baguio, Colegio Mercantil, Instituto Burgos, Liceo, Seminario de Vigan, and La Salle College. Private professional schools have recently been standardized.

Extra-Legal Forces.

Extra-legal forces exercise a more potent influence in the Philippines than is generally discerned. We cannot even name them all much less describe them. Some are for civic betterment. Others are for commercial purposes, as the *Asociación Económica de Filipinas.* Others are social institutions, as the Anti-Tuberculosis Society, *La Gota de Leche,* the Philippine National League for the Protection of Early Infancy, the Philippine Orphanage Association, the Society for the Prevention of Cruelty to Animals, and the Juvenile Protective Association. The churches are, of course, the greatest charitable, educational, and religious forces. Others are learned bodies, as the Philippine Academy, *Sociedad de Conferenciantes, Sociedad Geográfica de Filipinas,* Institute of Criminology, and Societies for the Cultivation of Native Languages. Moreover, particular classes organize, as the merchants into associations, the farmers into co-operative

[41] Report, Secretary of Public Instruction, 1914, pp. 266, 312-314; and information from P. S. O'Reilly, Superintendent of Private Schools.

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bodies and a Congress, labor into unions and Congresses, professions into associations, newspapermen into the *Asociación de Periodistas,* women into women's clubs, fraternities into lodges, and there are besides numerous literary, recreative, and athletic clubs. Finally, there are political parties inseparable from popular government and the most powerful influence outside the administration. They exist in the Philippines as the *Nacionalista* Party, the *Progresista* Party, and the *Partido Nacional Demócrata*—all with varying schisms.[42]

Defects and Merits.

We are too close to passing events to form a just estimate of the defects and merits of the American administration in the Philippines. That mistakes have been made will indubitably be true. What they are the future historian must ascertain. The occasional sizzling criticism of foreigners, generally imbued with a belief in the rectitude of their particular country's colonial policy and utterly unable to fathom American altruism, need not be taken too seriously.[42a] In extenuation, let the critic of the

[42] As to judicial control of political parties, both with and without express legislative authorization, see Stephenson *v.* Board of Election Com'rs (1898) 118 Mich. 396, 76 N. W. 914, 42 L. R. A. 214, 74 Am. St. Rep. 402; Philipps *v.* Gallagher (1898) 73 Minn. 528, 76 N. W. 285, 42 L. R. A. 22; People *ex rel.* Coffey *v.* Democratic General Committee (1900) 164 N. Y. 335, 58 N. E. 124, 51 L. R. A. 674; State *ex rel.* McGrael *v.* Phelps (1910) 144 Wis. 1, 128 N. W. 1041, 35 L. R. A. (N. S.) 353; A. H. Tuttle in 1 Mich. L. Rev. 466; F. R. Mechem in 3 Mich. L. Rev. 364—Hall's Cases on Constitutional Law, p. 108; Stimson Popular Law Making, p. 288. For the Philippines note Severino *v.* Governor General (1910) 16 Phil. 366.

[42a] "To put it bluntly, the opinion of English observers is that American rule in the Philippines has resulted so far in something little short of chaos." Sydney Brooks, An English View of Our Philippine "Fiasco," 51 Harp. Wkly., Aug. 31, 1907, p. 1270. For a

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future remember the sober language of a Justice of the Supreme Court: "The government here is a new one. Its establishment is a step in ways heretofore untrodden by the American Republic. Its history furnished no example, its law no precedent. Her statesmanship had, up to the moment, framed no model from which a colony government might be fashioned; the philosophy of her institutions presents no theories along which action may unhesitatingly proceed. There is no experience to guide the feet; no settled principles of colonial government and administration to which men may turn to justify their action or dissipate their doubts."[43] But that there are vastly over-balancing merits must likewise be undeniable.[44] What they are is for the Filipinos and foreign investigators to say. It is hardly fitting for an American to expand the ego and to boast of "my" or "our" ac-

Spanish view of why the United States has "failed" in the Philippines, see P. Sincero, in *Nuestro Tiempo,* reviewed in 35 Am. Rev. of Rev., Jan., 1907, p. 106.

[43] Concurring opinion of Moreland, J., in Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, 589. See also the delightful narrative by Professor Albert Bushnell Hart of Harvard University. The Obvious Orient, pp. 256, 283, in which he shows the difficulties encountered by the American government.

[44] Read Barrows, A decade of American Government in the Philippines; Worcester, The Philippines Past and Present, Vol. II, Ch. 35; Coolidge, The United States as a World Power, pp. 169, 170. "There have been mistakes—mistakes that were very expensive to the Filipino taxpayers; there have been injustices and wrongs. Some things have been overdone and other things have been neglected. I do not, however, on that account underrate the value of your work as a whole, and I gladly reiterate that considering all the circumstances you have done marvels." Speech of Hon. Manuel L. Quezon in the House of Representatives, The Philippine Bill, printed in Vol. 51, No. 268, p. 18777, November 2, 1914, Sixty-Third Congress, Second Session, Congressional Record. "The present régime of the Philippine Islands is one of the marked successes of the American people. It stands high among the tropical colonial governments of Christendom, for the skill with which

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complishments in the Philippines. May we not, however, suggest that compared with the colonies of European powers or even with the experiences of a state of the American Union, the American record in the Philippines contains nothing for which one need be ashamed. The people of the United States can well be proud of the men who have guided the government of the Philippine Islands—Taft, Wright, Ide, Smith, Forbes, Gilbert, Martin, Harrison—ably assisted by a splendid array of American officials and employees. They have differed in policies—all were sterling Americans.

it is framed and the efficiency with which it is carried on; it is immeasurably the best government that has ever been known within the Archipelago; furthermore, it is not too much to say that no territory, no city and no state within the United States has a system of government so carefully thought out, so well concentrated and so harmonious in its parts as that of the Philippine Islands." Hart, The Obvious Orient, pp. 256 *et seq.* "No one can review the achievements of the past decade in the Philippines without granting it to be a signal triumph over unusual difficulties and misunderstandings. This is a brief period as measured by the usual progress of society, but in colonial administration it has frequently happened that great changes have not waited upon long lapse of time. Cæsar was in Gaul only eight years; Clive's famous Indian governorship lasted less than six; Raffles was in Java only five. A decade of co-operative effort between Americans and Filipinos has changed the future of the Archipelago." Barrows, A Decade of American Government in the Philippines, p. 1.

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PART II.

FUNDAMENTAL.

CHAPTER 6.

THE RELATIONS BETWEEN THE UNITED STATES AND THE PHILIPPINES.

§ 81. Expansion.
82. The right of the United States to acquire territory.
83. The right of the United States to govern territory.
84. Purpose prior to Spanish-American war.
85. The doctrine of the insular cases.
86. The power of congress.
87. The right of the United States to admit the Philippine Islands into the Union as a state, to cede to a foreign power, or to declare independent.
88. Application to constitutional relation of the Philippines to the United States.
89. Congressional control.
90. Presidential control.
91. The bureau of insular affairs.
92. Resident commissioners to the United States.

§ 81. Expansion.[1]—When the United States became independent, the states occupied a narrow strip of

[1] See I Moore, International Law Digest, pp. 429-611; Willis F. Johnson, A Century of Expansion; Edward Bicknell, Territorial Acquisitions of the United States; William A. Mowry, The Territorial Growth of the United States; Oscar P. Austin, Steps in the Expansion of Our Territory; Archibald Cary Coolidge, The United States as a World Power, pp. 30-39; Archibald R. Colquhoun, Greater America, Ch. II; Cyclopedia of American Government, George H. Blakeslee, title "Annexations to the United States";

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land which straggled along the Atlantic seaboard from Canada to Florida, populated inland to the Alleghany Mountains with vague claims even to the Mississippi River and the Great Lakes. Hardly anyone then dreamed[2] that in a little more than a century by an expansion more by accident than by design, the country would pass straight through to the Pacific and over the seas to far distant isles, northward to the Arctic regions and southward to the Torrid Zone. Yet that is exactly what has happened. And now with the wisdom which comes from experience, one can see that geographic barriers made expansion inevitable.

Following the absorption of the Northwest Territory in 1787, came the Louisiana purchase from Napoleon in 1803; the Florida purchase from Spain in 1819; the Oregon set-off arranged with Great Britain in 1846; the Texas annexation in 1845; the Mexican cessions in 1848

The Insular Cases, De Lima *v.* Bidwell (1901) 182 U. S. 1, 186-195, 45 L. Ed. 1041; Downes *v.* Bidwell (1901) 182 U. S. 244, 252-256, 45 L. Ed. 1088.

[2] But Alexander Hamilton, in a letter to Washington, wrote: "We must remain in a position to take advantage of circumstances, we must be prepared to acquire Florida, and to annex Louisiana and we must even wink further South." And Gouverneur Morris, the author of that clause of the Constitution which confers upon Congress the power to make rules and regulations respecting territory and other property of the United States, writing in 1803 to Livingston said: "I am very certain that I had it not in contemplation to insert a decree *de coercendo imperio* in the Constitution of America. Without examining whether a limitation of territory be or be not essential to the preservation of republican government, I am certain that the country between the Mississippi and the Atlantic exceeds by far the limits which prudence would assign, if in effect any limitation be required. Another reason of equal weight must have prevented me from thinking of such a clause. I knew as well then as I do now that all North America must at length be annexed to us. Happy, indeed, if the lust of dominion stop there." Morris, Life and Writings (Sparks), Vol. III, p. 185; Willoughby on the Constitution, p. 328.

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and 1853; the Alaska purchase from Russia in 1867; the Hawaiian annexation in 1898; the Spanish cessions in 1899; the Samoa agreement in the same year; the Panama Canal Zone treaty in 1903; and other small acquisitions. Proposals for the annexation of Canada, Cuba, Salvador, Yucatan, and other territory were either made and rejected by the United States or seriously considered but never accomplished. Practically every method by which boundaries may be extended had been followed—by conquest, by diplomatic negotiations, by proffer of the constituted authorities, and by occupation. At a total cost of something over $80,000,000.00[3] the United States obtained land, the richest in the world, whose worth is beyond the ken of man to approximate.

Always was there opposition to expansion which in the cases of the Danish West Indies and the Dominican Republic caused treaties to fail of ratification in the Senate. In the other instances where acquisition succeeded, arguments usually resting on expediency and constitutionality were put forward by a vigorous minority. Senator White denounced the Louisiana purchase as a curse. John Quincy in a speech on the admission of Louisiana as a State said: "You have no authority to throw the rights and liberties and property of this people into hotchpot with the wild men on the Missouri, nor with the mixed, though more respectable, race of Anglo-Hispano-Gallo-Americans who bask on the sands at the mouth of the Mississippi." As to the purchase of

[3]

Louisiana	$15,250,000
The Floridas	5,000,000
Mexican Cessions	25,000,000
Alaska	7,200,000
Spanish-American War	20,000,000
Panama Canal Zone	10,000,000
Total	$82,450,000

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Alaska it was almost unanimously ridiculed. On the floor of Congress it was termed "a wretched and God-forsaken region, worth nothing, but a positive injury and encumbrance as a colony of the United States." The anti-imperialistic arguments against ratification of the Treaty of Paris are too recent to need restatement.

Whether wisely or wrongly, the United States is a world power.

§ 82. The right of the United States to acquire territory.[4]—The Constitution of the United States contains no provision expressly authorizing the acquisition of territory. A nice constitutional question consequently arose with the proposal to purchase Louisiana.[5] President Jefferson and some of his party leaders while wishing the culmination of the negotiations, yet as strict constructionists doubted whether the Constitution warranted the acquisition of foreign territory.[6] An amendment to the Constitution authorizing annexations was indeed prepared but never submitted. When the subject came before Congress for discussion, the constitutionality of the annexation of territory in some form was admitted

[4] See generally Willoughby on the Constitution, Chs. XXII, XXIII.

[5] See Von Holst, Constitutional History of the United States, Vol. I, pp. 187 *et seq.;* Watson on the Constitution, Vol. II, pp. 1265 *et seq.;* Writings of Jefferson, Gallatin, Morris, etc.

[6] Writing to Senator Breckenridge on August 12, 1803, the President said: "But I suppose they (both Houses of Congress) must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The executive, in seizing the fugitive occurrence which so much advances the good of their country, has done an act beyond the Constitution. The legislature, in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized what we know

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by both parties. Senator Pickering, the great anti-expansionist of his time, declared that he "had never doubted the right of the United States to acquire new territory, either by purchase or by conquest, and to govern the territory so acquired as a dependent province." [7] Congress formally acquiesced in the view that territory may be lawfully acquired, by enacting statutes relating to Louisiana. The legal beginnings of this, the first acquisition of territory by the United States, had thus settled the question so far as could be done by legislative and executive action.

Shortly after the formation of the Union, in 1810, the right to acquire and hold territory was touched upon lightly by the United States Supreme Court [8] as one which could be taken for granted. With the cession of the Floridas, it became necessary for the Court to take into view the relation in which that territory stood to the United States. In the course of a luminous and leading opinion, Mr. Chief Justice Marshall, who had the benefit of argument by able counsel, including Daniel Webster, pointed out that "the Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possessed the power of acquiring territory, either by con-

they would have done for themselves had they been in a situation to do it." Jefferson, Works, Vol. IV, p. 500; Von Holst, Constitutional History of the United States, Vol. I, p. 191. Jefferson wrote in similar tenor to Dickinson and Nicholson, but to Gallatin he said that "there is no constitutional difficulty as to the acquisition of territory." Writings of Albert Gallatin, Vol. I, pp. 113-115.

[7] Annals of Congress 1803. See Albert Bushnell Hart, Harper's Monthly Magazine, January, 1900, p. 311. The question again came to the fore in the debates attendant upon the annexation of Texas. Cong. Globe, 28th Cong., 2d Sess., p. 331.

[8] Seré and Laraldé *v.* Pitot *et al.* (1810) 6 Cranch, 332, 3 L. Ed. 240.

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quest or by treaty."[9] This deduction has since, with little or no argument, been followed by the courts.[10]

One view, exactly concordant with the words of the great Chief Justice, holds to the fundamental principle that the Federal government possesses only express powers and such other incidental and implied powers as are necessary and proper to carry the express powers into execution.[11] The Constitution provides that "the Congress shall have power . . . to declare war" (Art. 1, Sec. 8); "the President shall have to power to make treaties . . . " (Art. 2, Sec. 3). Under the first article, territory could be acquired by conquest; under the second by purchase. Consequently, when the people and the States devested themselves of these powers, there went with them, as necessary and proper to the carrying out of such enumerated powers, the right to acquire territory.[12]

[9] American Insurance Co. *v.* Canter (1828) 1 Pet. 511, 542, 7 L. Ed. 242.

[10] Fleming *v.* Page (1850) 9 How. 603, 13 L. Ed. 276; Stewart *v.* Kahn (1870) 11 Wall. 493, 20 L. Ed. 176; U. S. *v.* Huckabee (1873) 16 Wall. 414, 21 L. Ed. 457; Insular Cases, etc.

[11] See Constitution, Art. 1, Sec. 8, last paragraph; McCullough *v.* Maryland (1819) 4 Wheat. 316, 4 L. Ed. 579; Kansas *v.* Colorado (1907) 206 U. S. 46, 51 L. Ed. 956; and other leading cases.

[12] According to the isolated decision in the celebrated Dred Scott Case, the power of acquisition may also be derived from the power of Congress to admit new states (Constitution, Art. 4, Sec. 3). Scott *v.* Sanford (1856) 19 How. 393, 447, 15 L. Ed. 691. "If it (the power of annexation) is to be implied only from the latter power (the right to admit new states), it would seem quite reasonable to hold that it could be exercised in any case only for the purpose of creating a new state out of the acquired territory, and there would be no power to govern it except for that purpose; but the right of Congress to admit the acquired territory as a state or states, or to refuse to do so, according to its own judgment and discretion, is universally admitted, and, therefore, it would seem to follow that the power to acquire and govern cannot be derived from the power to admit, for, if it did, all territory acquired by

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The other view is that territory may be acquired under the primary and inherent power of sovereignty. Thus during the colonial period the British monarchs were sovereign; after the revolution sovereignty passed to and vested in the people; the sovereign people then reserved to themselves the power to acquire territory, making the Federal government, especially in external relations, the exclusive representative and embodiment of the entire sovereignty of the nation, in its united character and in its highest dignity and greatest force, except as expressly prohibited. Said Mr. Justice Bradley in his concurring opinion in the Legal Tender Cases, "The United States is not only a government, but it is a national government, and the only government in this country that has the character of nationality. . . . Such being the character of the general government, it seems to be a self-evident proposition that it is invested with all those inherent and implied powers which, at the time of adopting the Constitution, were generally considered to belong to every government as such, and as being essential to the exercise of its functions." [18] The people designed the national government "to stand amid all conditions and in every emergency, against everything human,"—in the language of the Declaration of Independence "to do all . . . things which independent states may of right do." The theory then is that any power possessed by any sovereignty, such as the normal right to extend boundaries, particularly in view of the "immutable principle of self-defense," is possessed by the United States.

either of the methods stated would have to be converted into a state or states." Address of John G. Carlisle before the American Bar Association, 1902.

[18] 12 Wall. 457, 554, 20 L. Ed. 287 (1870). See also Lamar, J., in the Neagle Case (1890) 135 U. S. 84, 34 L. Ed. 55; Territory of Utah *v.* Daniels (1889) 6 Utah 288, 5 L. R. A. 444.

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The last doctrine finds strong support from eminent publicists and lawyers. Not to mention Mr. Charles A. Gardiner in a monograph on the subject, Mr. Charles Henry Butler in his work on the Treaty Making Power, Mr. Magoon, Law Officer of the Bureau of Insular Affairs, in one of his scholarly reports, and Senators Platt and Foraker, Professor Willoughby in the latest argument on the point says that the doctrine is the one "which, constitutionally speaking, appeals to the author as the soundest mode of sustaining the power of the United States to acquire territory, as well as the one which, in application, affords the freest scope for its exercise. According to this doctrine, the right to acquire territory is to be searched for not as implied in the power to admit new States into the Union, or as dependent specifically upon the war and treaty powers, but as derived from the fact that in all relations governed by the principles of International Law the general government may properly be construed to have, in the absence of express prohibitions, all the powers possessed generally by states of the world. This doctrine thus is that the control of foreign relations being exclusively vested in the United States, that government has in the exercise of this jurisdiction the same power to annex foreign territory that is possessed by other sovereign States." [14]

[14] Willoughby on the Constitution, p. 340. Charles A. Gardiner, Our Right to Acquire and Hold Foreign Territory, says: "The right to acquire territory irrespective of its *situs*, contiguous or foreign, by conquest, treaty, purchase, or discovery, is an acknowledged and well established attribute of sovereignty and has been exercised by sovereigns from the beginning of recorded history." Mr. Butler, Treaty-Making Power of the United States, Vol. I, pp. 77, 78, says, "Not having surrendered any of its fully sovereign powers, as to the matters wholly within its own domain, the United States therefore possesses, in common with every other sovereign power, this right of acquisition of territory which, in the light of international law as we are now viewing it, includes

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Language of the highest judicial tribunal also justifies this stand. Generally, as said in Fong Yue Ting *v.* United States: "The United States are a sovereign and independent nation, and are vested by the Constitution with the entire control of international relations, and with all the powers of government necessary to maintain that

the right to acquire, and to exercise sovereignty over, whatever territory it may desire and can obtain by any method recognized by international law, and also to extend such sovereignty over all of the inhabitants thereof." Magoon in his Reports to the War Department on the Legal Status of the Territory and Inhabitants of the Islands Acquired by the United States During the War with Spain, pp. 37, 84, says: "The United States derives the right to acquire territory from the fact that it is a nation; to speak more definitely, a sovereign nation. Such a nation has an inherent right to acquire territory, similar to the inherent right of a person to acquire property." Senator Platt of Connecticut declared in the Senate, December 19, 1898, that the United States "possesses every sovereign power not reserved in its Constitution to the states or to the people; that the right to acquire territory was not reserved, and is, therefore, an inherent sovereign right; that it is a right upon which there is no limitation and with regard to which there is no qualification; that in certain instances the right may be inferred from specific clauses in the Constitution, but that it exists independent of the clauses; that in the right to acquire territory is found the right to govern it; that as the right to acquire is a sovereign and inherent right, the right to rule is a sovereign right not limited in the Constitution." XXXII Cong. Record, No. 11, pp. 321-323. Senator Foraker, in the United States Senate July 1, 1898, in a debate with reference to the annexation of Hawaii said: "Each one of those sovereign states had every power that sovereignty enjoys ordinarily, and among the powers so enjoyed by each one of the sovereign states was the power to make treaties with foreign nations, and any kind of a treaty it might choose to make, because there was no restriction unless by itself upon the exercise of that power. It could make war; it could make a treaty for the acquisition of territory; it could annex in any way it saw fit to annex. But, Mr. President, no Senator will contend here that any state in this Union has that power now. That power has been lost to each and every state of the Union. As the price for coming into the Union, it

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control and to make it effective." [15] Specifically, as said by Mr. Justice White in Downes *v.* Bidwell: "The decisions of this court leave no room for question that, under the Constitution, the government of the United States, in virtue of its sovereignty, supreme within the sphere of its delegated power, has the full right to acquire territory enjoyed by every other soverign nation." [16]

Naturally there have been those who have attacked the constitutional soundness of the inherent sovereignty doctrine. To them it would seem that no argument can be drawn from the necessities of government or from the nature of sovereignty outside of the Constitution. To them it is basic that the government of the United States is one of delegated and limited powers. It derives its existence and authority altogether from the Constitution and none of its branches can exercise any of the

was required to surrender it. The Constitution of the United States prohibits to the states the exercise of the treaty-making power with foreign nations. It prohibits all kinds of transactions on the part of the states with foreign nations. No state could acquire territory by treaty in any other manner. Therefore, each one of the states in the Union has surrendered that power of sovereignty. No one of them has it. Are we to be told that that inherent power of sovereignty, which every state enjoyed before it came into the Union, has been lost to the states and has not been given to any other power? What has become of it? Where has it gone? Our contention is that when to the states was denied this power, which they had a right to exercise as a sovereign power, it went by implication to the general government among the implied powers, and it is not any 'higher law.' It seems to me it is but the necessary and legitimate result of a fair construction of the provisions of the Constitution."

[15] 149 U. S. 698, 711, 37 L. Ed. 905 (1892).

[16] 182 U. S. 242, 303, 45 L. Ed. 1088 (1901). See also Mormon Church *v.* U. S. (1890) 136 U. S. 1, 33, 34 L. Ed. 478; Legal Tender Cases (1870) 12 Wall. 557, 20 L. Ed. 287; Chinese Exclusion Case (1888) 130 U. S. 581, 32 L. Ed. 1068; and Jones *v.* U. S. (1890) 137 U. S. 202, 34 L. Ed. 691.

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powers of government beyond those specified and granted.[17]

The writer's conclusion is this: The right of the United States to acquire territory can no longer be questioned, since confirmed by legislative, executive, and judicial authority. Situs or non-contiguity may affect policy but not constitutional bearings. This right can be adjudged as an implied power resting on the articles of the Constitution conferring the express powers to declare war and to make treaties. It can also be resolved as a result of sovereignty, an attribute of every State, which would persist if every line of the Constitution were blotted out. At least as Mr. Justice Day in the Dorr Case,[18] having particular reference to the manner in which the Philippines were acquired, said: "It is . . . well settled that the United States may acquire territory in the exercise of the treaty making power by direct cession as a result of war, and in making effectual the terms of peace; and for that purpose has the powers of other sovereign nations."

The procedure[19] for acquisition has been either by treaty, by joint resolution, by statute, or by incorporation into statehood. The first method has been followed except as to Texas, which was made a State, as to Hawaii, which was annexed by joint resolution, and as to the Guano Islands, which were recognized as under American sovereignty by statute.

[17] *Ex parte* Merryman, Campbell's Reports, 246; Tyler, Life of Taney, p. 651; Willoughby, The American Constitutional System, pp. 147, 148, 149.

[18] 195 U. S. 138, 140, 49 L. Ed. 128, 11 Phil. 706, 708 (1904). "It is too late in the history of the United States to question the right of acquiring territory by treaty." Wilson *v.* Shaw (1906) 204 U. S. 24, 51 L. Ed. 351.

[19] See Willoughby on the Constitution, p. 344.

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§ 83. The right of the United States to govern territory.[20]—With the right to acquire territory admitted "it would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired." [21] The United States cannot be left helpless in the family of nations. In the language of Mr. Chief Justice Marshall,[22] "the power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory." He continues—"Could this position be contested, the Constitution of the United States declares that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." In a later case [23] the Chief Justice suggests another source for the power: "Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned."

The power to govern territory could therefore be ascribed to any one of three sources—as a consequence of the right of acquisition; because the territory is not within the jurisdiction of any State; and from Article

[20] See generally Willoughby on the Constitution, Ch. XXIV.

[21] Mormon Church *v.* U. S. (1890) 136 U. S. 1, 42, 34 L. Ed. 478. See also Murphy *v.* Ramsey (1884) 114 U. S. 15, 29 L. Ed. 47.

[22] Seré and Laraldé *v.* Pitot *et al.* (1810) 6 Cranch, 332, 336, 3 L. Ed. 240.

[23] American Insurance Co. *v.* Canter (1828) I Pet. 511, 542, 7 L. Ed. 242.

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4, section 3,[24] of the Constitution providing that "the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States."

Gouverneur Morris, the author of the clause of the Constitution just quoted, in response to a question as to its precise meaning, plainly showed that it was the intention thereby to authorize the power to govern possible acquisitions such as Canada and Louisiana.[25] In other words, the phrase "territory belonging to the United States" was not meant to be a mere abstraction or the equivalent of land. It was placed in a document prepared for all time which would advance in scope with changing conditions and which would represent all the essential qualities usually found in sovereignty. And while in some decisions [26] the clause has been referred to as granting political and legislative control over the territories, other cases have been more inclined to the view that the power to govern territory "is an authority which arises not necessarily from the territorial clause of the Constitution, but from the necessities of the case, and from the inability of the States to act on the subject." [27] The Supreme Court only recently admitted that the full scope of Article 4, Section 3, of the Constitution "has

[24] Art. 4, Sec. 3, Par. 2, U. S. Constitution is analyzed word by word in Snow, The Administration of Dependencies pp. 458-473. See also Watson on the Constitution, Vol. II, pp. 1255 *et seq.*

[25] Life and Writings (Sparks) Vol. III, p. 192; Snow, The Administration of Dependencies, pp. 538, 539; Magoon's Reports, p. 63.

[26] Cross *v.* Harrison (1853) 16 How. 164, 14 L. Ed. 889; U. S. *v.* Guthrie (1854) 17 How. 284, 15 L. Ed. 102 (McLean, J.); Mormon Church *v.* U. S. (1889) 136 U. S. 1, 34 L. Ed. 478.

[27] De Lima *v.* Bidwell (1901) 182 U. S. 1, 196, 45 L. Ed. 1041; Downes *v.* Bidwell (1901) 182 U. S. 244, 45 L. Ed. 1088. See also U. S. v. Kagama (1886) 118 U. S. 375, 30 L. Ed. 228.

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never been definitely settled." [28] Preferably it would now be more logical to rest the power to govern, jointly on the propositions that it is the complement of the right to acquire territory, because it is not within the jurisdiction of any particular State, and because it is given to Congress by Article 4, Section 3, of the Constitution.[29] Whatever be the exact source of power the right to govern territories has been so long exercised by Congress and so long acquiesced in by the Courts that it is no longer open to question.

§ 84. Purpose prior to Spanish-American War.—Generally speaking all acquisitions before the Spanish-American War were of territory out of which States could be formed. The land was suitable for American colonization. The military and territorial governments were but temporary measures leading to permanent assimilation and incorporation. The statements of public men, opinions of the Courts, laws of Congress, and the solemn declarations of the treaties of annexation, all bear out this view.

The provisions of the treaties in this respect are most important, for therein the United States voluntarily assumed obligations regarding the future of the inhabitants of the territory. The treaty with France as to Louisiana settled the political status of the inhabitants by the following clause: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be main-

[28] Kansas *v.* Colorado (1906) 206 U. S. 46, 89, 51 L. Ed. 956, 971. See also National Bank *v.* County of Yankton (1879) 101 U. S. 129, 132, 25 L. Ed. 1046.

[29] See Dorr *v.* U. S. (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706.

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tained and protected in the free enjoyment of their liberty, property and the religion which they profess." [30] Marshall conceded this to mean "that Louisiana shall be admitted into the Union as soon as possible upon an equal footing with the other States." [31] The succeeding treaties with Spain as to the Floridas, with Mexico as to its cessions, and with Russia as to Alaska in much the same language [32] showed a purpose to incorporate the acquired territory into the United States. The joint resolution annexing the Hawaiian Islands made them "a part of the territory of the United States." [33]

Congress executed the contracts of the treaties and the joint resolution by extending its laws and the Constitution to the territory and by erecting portions into States.[34] Section 1891 of the Revised Statutes provides: "The Constitution and all laws of the United States which

[30] 8 Stat. at L. 202; I U. S. Treaties and Conventions, 509.

[31] New Orleans *v.* De Armas (1835) 9 Pet. 224, 235, 9 L. Ed. 109.

[32] 8 Stat. at L. 256 (Florida); 9 Stat. at L. 930 (Mexico); 15 Stat. at L. 542 (Alaska). See Magoon's Reports, pp. 41-45.

[33] 30 Stat. at L. 750; 31 Stat. at L. Ch. 339.

[34] See Magoon's Reports, p. 43, for description. "The liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression." Downes *v.* Bidwell (1901) 182 U. S. 244, 286, 45 L. Ed. 1088. Only Alaska and Hawaii are now outside the pale of States. But the Constitution was expressly extended to Alaska by Section 3, Act of Congress, August 24, 1912, 37 Stat. at L. Ch. 387; and to Hawaii by Section 5, Act of Congress, June 14, 1900, 31 Stat. at L. 141.

The historic debate on an amendment to a bill to extend the Constitution and certain laws of the United States over the proposed territories of Utah and New Mexico, quoted by many authors, is described by Senator Benton as follows: "The novelty and strangeness of this proposition called up Mr. Webster, who repulsed as an absurdity and an impossibility the scheme of extending the

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are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere within the United States." The attitude of Congress is shown by the words of Mr. Chief Justice Marshall in Loughborough *v.* Blake:[35] "The difference between requiring a continent with an immense population to submit to be taxed by a government having no common interest with it, separated from it by a vast ocean, restrained by no principle of apportionment, and associated with it by no common feelings, and permitting the representatives of the American people, under the restrictions of our Constitution, to tax a part of the society, which is in a state of infancy, advancing to manhood, looking forward to complete equality as soon as that state of manhood shall be attained, as is the case with the Territories, is too obvious not to present itself to the minds of all." Again, in Shively *v.* Bowlby,[36] the court said: "The Territories acquired by Congress whether by deed or cession from the original States, or by treaty with a foreign

Constitution to the territories, declaring that instrument to have been made for states, not territories; that Congress governed the territories independently of the Constitution and incompatibly with it; that no part of it went to a territory but what Congress chose to send; that it could not act of itself anywhere, not even in the states for which it was made, and that it required an act of Congress to put it in operation before it had effect any where. Mr. Clay was of the same opinion, and added: 'Now, really I must say the idea that, *eo instanti,* upon the consummation of the treaty, the Constitution of the United States spread itself over the acquired territory and carried along with it the institution of slavery, is so irreconcilable with any comprehension or any reason I possess, that I hardly know how to meet it.'" Benton, Thirty Years in the United States Senate, Vol. 2, p. 279.

[35] 5 Wheat. 317, 324, 5 L. Ed. 98 (1820).

[36] 152 U. S. 1, 57, 38 L. Ed. 331 (1894). See further Downes *v.* Bidwell (1901) 182 U. S. 244 *et seq.*, 45 L. Ed. 1088 *et seq.*; Rasmussen *v.* U. S. (1905) 197 U. S. 516, 49 L. Ed. 862.

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country, are held with the object, as soon as their population and condition justify, of being admitted into the Union as States upon an equal footing with the original States in all respects."

There was always an expectation and intention which, moreover, was always brought to fruition, that the acquired districts should become incorporated as integral parts of the United States. The Constitution and the laws of Congress had full force by legislative extension.

§ 85. The doctrine of the insular cases.[37]—An entirely new and novel situation was presented after the Spanish-American War. Porto Rico, and with it the Philippines, were so located and constituted as not to be territory satisfactory for statehood or organized territorial government. Furthermore, the treaty of peace had created no such contract, but on the contrary had strictly stipulated that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." The President of the American Peace Commission has said in explanation of this reservation: "It was thus undertaken to give Congress, as far as the same could be constitutionally done, a free hand in dealing with these new territories and their inhabitants." [38]

Judicial decisions to clear up the uncertainty as to the position of the new acquisitions under the American Constitution were necessary. The Insular Cases, a group of

[37] See generally the Insular Cases, 182 U. S., 45 L. Ed. 1041, and printed together in a volume; Rowe, The United States and Porto Rico, Ch. III; Willoughby on the Constitution, Chs. XXVIII, XXX; Watson on the Constitution, Vol. II, pp. 1267-1281; J. C. McMahon, A Critical Study of the So-called Insular Cases (unpublished thesis).

[38] Address of Hon. William R. Day before the Michigan Bar Association, May 23, 1900, p. 9, quoted in C. F. Randolph, Law and Policy of Annexation, p. 20. Same language used by Mr. Day as a Justice of the Supreme Court in Dorr *v.* U. S. (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706.

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cases arising in 1901, submitted this fundamental question to the United States Supreme Court for resolution. The Court in the two most important cases met the issue in a rather singular manner. In each case the court gave judgment by a vote of five to four. But in each case the majority was shifted by the transference of the vote of one judge. The arguments presented before the court and the divergent opinions of its members were similar in tenor to those in prior epoch-making cases concerning the nature of the American constitutional system. They also followed closely the debates of Webster, Clay, and Calhoun. Four justices believed that the "Constitution followed the flag," *i. e.,* extended of its own force immediately and automatically by cession to the new territory, and four repudiated this theory and took the view that the Constitution could only be so extended by an Act of Congress.[39] The opinion of the Court resulted in the conclusion that when territory is annexed by the United States it ceases to be foreign but does not become completely domestic. Whether we agree with these decisions or not, it must be admitted that thereby Congress and the President have been given valuable discretionary power and have been permitted to inaugurate a new and untraditional policy.

The first case, De Lima *v.* Bidwell,[40] was an action to recover duties paid under protest on sugars imported from Porto Rico into the United States after the ratification of the treaty but before the passage of the Porto Rican (Foraker) Act. The Court, through Mr. Justice Brown, said that the case raised the single question

[39] Magoon in his reports has proved with elaboration, by incidents from United States history, that the Constitution and laws of the United States do not extend *ex propio vigore* over newly acquired territory.

[40] 182 U. S. 1, 45 L. Ed. 1041 (1901). See in connection therewith Cross *v.* Harrison (1853) 16 How. 164, 14 L. Ed. 889.

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whether territory acquired by the United States by cession from a foreign power remains "a foreign country" under the tariff law providing for duties upon articles "imported from foreign countries." The Court answered with the opinion that upon ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became territory of the United States, although not an organized territory in the technical sense of the word. Duties were no longer collectible upon merchandise brought from the Island.

But if Porto Rico was not a foreign country, did the converse, that it was a part of the United States within the provision of the Constitution which declares that "all duties, imposts, and excises shall be uniform throughout the United States"—hold true? The case of Downes *v.* Bidwell [41] attempted to settle this question. The Foraker Act was now in operation and imposed duties on the products of Porto Rico, but of a smaller per cent than those required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries. Did the revenue clauses of the Constitution extend of their own force to the newly acquired territory? Mr. Justice Brown, announcing the conclusion and judgment of the Court, held that "the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such Island, and that the plaintiff cannot recover back the duties exacted in this case." (P. 287, L. Ed. p. 1106.) The same Justice has since explained his position as being "that the Constitution does not apply to territories acquired by treaty until Congress has so declared, and that in the meantime, under its power to regulate the terri-

[41] 182 U. S. 244, 45 L. Ed. 1088 (1901).

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tories, it may deal with them regardless of the Constitution, except so far as concerns the natural rights of their inhabitants to life, liberty, and property." [42] Mr. Justice White, with whom joined Mr. Justice Shiras and Mr. Justice McKenna, and "in substance" Mr. Justice Gray, in a concurring opinion generally conceded to be the more authoritative and consistent, reached the general conclusion that it had been "indubitably settled by the principles of the law of nations, by the nature of government created under the Constitution, by the express and implied powers conferred upon that government by the Constitution, by the mode in which those powers have been executed from the beginning, and by an unbroken line of decisions of this Court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that on the other hand, when it has expressed in the treaty the conditions favorable to incorporation they will, if the treaty be not repudiated by Congress, have the force of the law of the land, and therefore by the fulfillment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, that incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family." (Pp. 338, 339, L. Ed. p. 1126.) Applied to the Treaty of Paris, the concurring opinion said the result

[42] Concurring opinion in Rasmussen *v.* U. S. (1905) 197 U. S. 516-531, 49 L. Ed. 862-868.

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was "that while in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereto as a possession." (Pp. 341, 342, L. Ed. p. 1127.) The dissenting opinion of Mr. Chief Justice Fuller, with whom concurred Justices Harlan, Brewer, and Peckham, concluded with the opinion that "Porto Rico became, at least after the ratification of the treaty with Spain, a part of and subject to the jurisdiction of the United States in respect of all its territory and people, and that Congress could not thereafter impose any duty, impost, or excise with respect to that Island and its inhabitants which departed from the rule of uniformity established by the Constitution." (P. 391, L. Ed. p. 1146.)

The Insular Cases have been criticized, but, nevertheless, have been followed in many cases since decided. From them we deduce [43] that after the Treaty of Paris, Porto Rico did not become a foreign country in an inter-

[43] Our own Supreme Court in U. S. *v.* Dorr (1903) 2 Phil. 269, 273, per Cooper J. says that the following conclusions are deducible from the decision in Downes *v.* Bidwell:

"1. That Puerto Rico (to which the Philippines is equally situated) did not by the act of cession from Spain to the United States become incorporated in the United States as a part of it, but became territory pertaining to and belonging to the United States.

"2. That as to such territory Congress may establish a temporary government, and in so doing it is not subject to all the restrictions of the Constitution.

"3. That the determination of what these restrictions are and what particular provisions of the Constitution are applicable to such territories involves an inquiry into the situation of the territory and its relation to the United States.

"4. That the uniformity provided for in the revenue clause of the Constitution is not one of those restrictions upon Congress in its government of the territory of Puerto Rico."

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national sense, but Porto Rico did become foreign to the United States in a domestic sense. Porto Rico did not, by the act of cession from Spain, become incorporated into the United States as a part thereof, but Porto Rico did become a possession appurtenant and belonging to the United States.

§ 86. The power of Congress.—The United States Supreme Court has used emphatic language in affirming the "general," "plenary," "sovereign," "discretionary," "supreme" power of Congress, accredited representative of American sovereignty, to govern the territories and possessions. Beginning with Chief Justice Marshall in 1810 who spoke of "Congress possessing and exercising the absolute and undisputed power of governing and legislating for the territory of Orleans" [44] down to the last recorded pertinent case,[45] such power residing in Congress has never been disputed. As a matter of necessity until Congress can act, the President has the right to issue orders for the government of acquired territory.[46] Thereafter, the government of the new territory belongs "primarily to Congress, and secondarily to such agents as Congress may establish." [47] Congress may exercise its discretionary legislative functions over territories directly from Washington or indirectly through

[44] Seré and Laraldé *v.* Pitot (1810) 6 Cranch 332, 337, 3 L. Ed. 240.

[45] See Benner *v.* Porter (1850) 9 How. 235, 242, 13 L. Ed. 119; National Bank *v.* County of Yankton (1880) 101 U. S. 129, 133, 25 L. Ed. 1046, 1047; Murphy *v.* Ramsey (1884) 114 U. S. 15, 44, 29 L. Ed. 47; Mormon Church *v.* U. S. (1889) 136 U. S. 1, 42, 34 L. Ed. 478; Boyd *v.* Thayer (1892) 143 U. S. 135, 36 L. Ed. 103; Simms *v.* Simms (1899) 175 U. S. 162, 168, 42 L. Ed. 115; Binns *v.* U. S. (1904) 194 U. S. 486, 491, 48 L. Ed. 1087; U. S. *v.* Bull (1910) 15 Phil. 7. Also Kent's Commentaries 385; 38 Cyc. p. 200, note 39.

[46] Cross *v.* Harrison (1853) 16 How. 164, 14 L. Ed. 889; *In re* Allen (1903) 2 Phil. 630.

[47] Snow *v.* U. S. (1873) 18 Wall. 317, 319, 21 L. Ed. 784.

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organized rule. It may legally transfer its power to a local legislative body.[48] As expressed in the Constitution, the rules and regulations established by Congress for a territory must only be "needful." Since, however, the question of what is "needful" is political and not judicial in character, this is no practical limitation. Congress possesses the choice of forms and means.[49]

While of course conceded that the power vested in Congress is thus of wide extent, yet it would not be logical to suppose that it is without limitation.[50] Even if Congress, as has been decided, has the entire dominion and sovereignty, national and local, Federal and State, combining the powers of both the latter, still such complete and supreme authority must be modified by the words "under the Constitution" and must at least be subject to most, if not all, of the prohibitions on Congress not to do certain things and others necessarily implied therefrom. No power of society over its members is absolute. "The theory of our governments, state and national," says Mr. Justice Miller, "is opposed to the deposit of unlimited power anywhere."[51] Numerous cases have hinted at restrictions on Congress under the Constitution.[52]

[48] Simms *v.* Simms (1899) 175 U. S. 162, 168, 42 L. Ed. 115; Binns *v.* U. S. (1904) 194 U. S. 486, 491, 48 L. Ed. 1087; U. S. *v.* Heinszen & Co. (1907) 206 U. S. 370, 385, 51 L. Ed. 1098.

[49] U. S. *v.* Fisher (1804) 2 Cranch 358, 2 L. Ed. 304; McCulloch *v.* Maryland (1819) 4 Wheat. 316, 4 L. Ed. 579.

[50] Yet the words "without limitation" are found in U. S. *v.* Gratiot (1840) 14 Pet. 526, 537, 10 L. Ed. 573, 578.

[51] Loan Association *v.* Topeka (1875) 20 Wall. 655, 22 L. Ed. 455. See also Murphy *v.* Ramsey (1884) 114 U. S. 15, 29 L. Ed. 47.

[52] National Bank *v.* County of Yankton (1880) 101 U. S. 129, 133, 25 L. Ed. 1046; Murphy *v.* Ramsey (1884) 114 U. S. 15, 44, 29 L. Ed. 47, followed in Boyd *v.* Thayer (1892) 143 U. S. 135, 169, 36 L. Ed. 103; Hawaii *v.* Mankichi (1903) 190 U. S. 197, 47 L. Ed. 1016; Binns *v.* U. S. (1904) 194 U. S. 486, 491, 48 L. Ed. 1087; Dorr *v.* U. S. (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706, etc.

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Mr. Justice Curtis in his historic Dred Scott opinion [53] stated the question thus: "If, then, this clause does contain a power to legislate respecting the territory, what are the limits of that power?"—and answered thus: "In common with all the other legislative powers of Congress, it finds limits in the express prohibitions on Congress not to do certain things; that, in the exercise of the legislative power, Congress can not pass an *ex post facto* law or bill of attainder; *and so in respect to each of the other prohibitions* contained in the Constitution." This apparently overstates the true rule for in the Dorr case [54] the Court after giving these same quotations declined to hold that the constitutional right to trial by jury required Congress to extend this system to ceded territory. The Court said that the extent of the limitations "must be decided as questions arise" and that "Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled . . . that the territory is to be governed under the power existing in Congress to make laws for such territories and *subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.*" That some of the limitations were not intended to operate upon Congress in legislating for territories is shown by the thirteenth amendment, providing that neither slavery nor involuntary servitude shall exist "within the United States or any place subject to their jurisdiction." It would have been superfluous to have appended the last clause if the prohibitions applied to all territory a part of or appurtenant to the United States.

[53] Dred Scott *v.* Sanford (1856) 19 How. 393, 614, 15 L. Ed. 691, 787.

[54] 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706 (1904). "Most, if not all, the privileges and immunities contained in the bill of rights of the constitution were intended to apply. . . ." Hawaii *v.* Mankichi (1903) 190 U. S. 197, 47 L. Ed. 1016.

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The same vague uncertainty is found when we consider the argument that the people of the territory are protected in their rights by forces anterior to the Constitution and above the Constitution. In one case the Court spoke of "essential principles upon which our system rests" [55] as restraining the power. In another case much quoted, Mr. Justice Bradley said: "Doubtless Congress, in legislating for the territories, would be *subject to those fundamental limitations* in favor of personal rights which are *formulated* in the Constitution and its Amendments; *but these limitations would exist rather by inference and the general spirit of the Constitution from which Congress derives all its powers, than by any express and direct application of its provisions.*" [56] Mr. Magoon would direct attention:

"To the use by the Court of the expression '*formulated* by the Constitution,' rather than created, conferred, or guaranteed by the Constitution, showing that the Court had reference to 'fundamental limitations' on legislative powers arising from the primal, inherent rights of men—rights which do not arise from constitutional provisions and antedate all governments, such as life, liberty, acquisition of property, formation of a family and begetting offspring, and other rights of like character. Such rights are not created or conferred by governments. They are protected, maintained, and promoted by all just governments, and their exercise regulated and controlled, and in proper individual instances taken away; but it is not the *right,* it is the *regulation* which originates with government. When we undertake to consider such rights in the abstract, we rise above constitutions and statutory enactments and enter the realm of ethics, and must deal

[55] McAllister *v.* U. S. (1890) 141 U. S. 174, 35 L. Ed. 693.

[56] Mormon Church *v.* U. S. (1889) 136 U. S. 1, 44, 34 L. Ed. 478. See also Thompson *v.* Utah (1897) 170 U. S. 343, 349, 42 L. Ed. 1061.

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with the laws of civilization and the spirit engendered by nineteen Christian centuries.

"All the powers of the government of the United States are limited and controlled by these higher laws, for the reason that the sovereign, i. e., the people of the United States, recognize their controlling power, and if an officer exercises his discretion in violation thereof, the sovereign displaces him and secures an incumbent whose discretion coincides therewith. Not even the Constitution is exempt." [57]

Mr. Justice Brown in his opinion in the Insular Cases [58] mentioned certain natural rights as applying. He said:

"To sustain the judgment in the case under consideration, it by no means becomes necessary to show that none of the articles of the Constitution apply to the Island of Porto Rico. There is a clear distinction between

[57] Magoon's Reports, p. 85.

[58] 182 U. S. 276, 277, 280, 282, 283, 291, 294, 45 L. Ed. 1088, (1901), mentioned in Duarte *v.* Dade (1915) 13 O. G. 2006. Again in concurring opinion in Rasmussen *v.* U. S. (1905) 197 U. S. 531, 49 L. Ed. 862. See Coudert, Certainty and Justice, pp. 89, 96. John G. Carlisle in an address before the American Bar Association, 1902, said: "The distinction attempted to be taken between the obligatory force of absolute prohibitions upon the power of Congress and the obligatory force of limitations and qualifications imposed by the Constitution upon the exercise of its powers over a particular subject, cannot, in my opinion, be sustained by any sound process of reasoning. It is true that there is a difference in degree between an absolute denial of all power to do a particular thing and a grant of power to do that thing to a limited extent, or in a prescribed manner only; but the absolute prohibition and the express or implied limitation are equally obligatory upon Congress. It is bound to obey both or its act is void. . . . To say that Congress, in legislating for a territory, is not bound by the constitutional *limitations* upon a granted power, but is or may be bound by the express ***prohibitions***, is simply to assert that all parts of the Constitution are not of equal force and effect as restraints upon legislation, and that a power not granted may be constitutionally exercised if it is not expressly prohibited, a theory, which,

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such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only 'throughout the United States' or among the several states. . . .

"There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. . . . We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice; to due process of law and to equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage (Minor *v.* Happersett, 21 Wall. 162), and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the states to be unnecessary to the proper protection of individuals."

if sanctioned by the judiciary, would at once revolutionize the government. It would no longer be a government of enumerated and delegated powers, but would possess the whole mass of sovereign power which is now vested in the people, subject only to the comparatively few express prohibitions."

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This seems to be the thought of Mr. Justice White in the same case, for he says:

"While, therefore, there is no express or implied limitation on Congress in exercising its power to create local governments for any and all of the territories, by which that body is restrained from the widest latitude of discretion, it does not follow that there may not be inherent, although unexpressed, principles which are the basis of all free government which cannot be with impunity transcended. But this does not suggest that every express limitation of the Constitution which is applicable has not force, but only signifies that even in cases where there is no direct command of the Constitution which applies, there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed, although not expressed in so many words in the Constitution. . . .

"Undoubtedly there are general prohibitions in the Constitution in favor of the liberty and property of the citizen, which are not mere regulations as to the form and manner in which a conceded power may be exercised, but which are an absolute denial of all authority under any circumstances or conditions to do particular acts. In the nature of things, limitations of this character cannot be under any circumstances transcended, because of the complete absence of power."

President Woodburn of Indiana University, after mentioning the Insular Cases and quoting from the opinions, continues:

"The rights of the people of the ceded Islands are guaranteed . . . by what has been called the *spirit of the Constitution and its unwritten law.* Custom, usage, precedent, our political habits, public expectation, the spirit of love of American liberty, the fundamental principles on which the nation was founded and by which it is guided,—all these are the forces to be relied upon to

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restrain the power of Congress in the government of the territories. Congress is bound by all the past principles and practices of the nation to secure all people subject to its jurisdiction against unreasonable searches and seizures; to accord the right to a speedy and public trial; to prevent excessive bail; to prevent the establishment by state authority of a state church; to prevent *ex post facto* acts and bills of attainder; to prevent slavery except in punishment for crime, and civil discriminations on account of race or color. Congress is bound to defend these rights for the people of the territories, not because the people there can claim privileges under the Constitution but because the nation may not violate the fundamental principles on which the Constitution was made." [59]

Mr. Root, when Secretary of War, said:

"The people of the ceded Islands have acquired *a moral right* to be treated by the United States in accordance with the underlying principles of justice and freedom which we have declared in our Constitution, and which are the essential safeguards of every individual against the powers of government, not because those provisions were enacted for them, but because they are essential limitations inherent in the very existence of the American government." [60]

To the foregoing can be added the factors of humanity enforced by public opinion. Mr. Chief Justice Marshall says that:

"Humanity, acting on public opinion, has established as a general rule that the conquered shall not be wantonly oppressed, and that their conditions shall remain as eligible as is compatible with the objects of the conquest. . . . Public opinion, which not even the conqueror can disregard, imposes these restraints upon him, and he

[59] The American Republic, pp. 381-391.
[60] Report of Secretary of War, 1899.

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can not neglect them without injury to his fame and hazard to his power." [61]

Can any safe deductions be made from such halting and contradictory judicial *dicta?* Only this: Congress has almost plenary power over the territories. It may delegate its functions to a local government. This power of Congress is not without limitation. All privileges and immunities of the Constitution, as the right to trial by jury under the sixth amendment, are not fundamental and so restrictive. Most prohibitions of the Constitution, as those relating to religious worship, personal liberty and individual property, freedom of speech and of the press, free access to courts of justice, due process of law, equal protection of the laws, unreasonable searches and seizures, cruel and unusual punishments, *ex post facto* laws, and bills of attainder, together with other moral and natural rights, constituting the unwritten law outside the Constitution, reinforced by public opinion acting in the interest of humanity, undoubtedly are restrictions on Congress, but must be resolved as each particular case arises.[62] As in the practical application of these rules to the Philippines, Congress has expressly extended thereto all of the basic principles of the American constitutional system, excepting the rights of trial by jury and the bearing of arms, and as the former of these has been decided adversely to the claimants, only the question of whether or not the right to bear arms is fundamental and restrictive would appear to be left for decision.

[61] Johnson *v.* McIntosh (1823), 8 Wheat. 589, 5 L. Ed. 681.

[62] But that there are limitations on Congress outside the Constitution can not be absolutely accepted. Remember the words of Chief Justice Marshall—"This power, *like all others vested in Congress,* is complete in itself, may be exercised to its utmost extent, and *acknowledges no limitations other than are prescribed in the Constitution.*" Gibbons *v.* Ogden (1824), 9 Wheat. 1, 6 L. Ed. 23.

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Fortunately also Congressional discretion has always been exercised with an anxious regard for the rights of the inhabitants of the territories.

§ 87. The right of the United States to admit the Philippine Islands into the Union as a state, to cede to a foreign power, or to declare independent.—These three constitute the broad constitutional possibilities open to the United States in dealing with the Philippine Islands. In considering them, let us recall: 1. That the United States possesses the inherent and sovereign right to acquire territory such as the Philippines. 2. That Congress has almost unlimited power in governing such territory. 3. That the Constitution grants to Congress the discretionary power to admit new states into the Union (Art. IV, sec. 3). 4. That the Constitution grants to the President, with the advice and consent of the Senate, the power to make treaties (Art. II, sec. 2). 5. That the Constitution contains no express provision authorizing the United States to cede territory to a foreign power or to declare territory independent. 6. That on the other hand, as in the constitutions of some other countries, the Constitution contains no express provision forbidding alienation of territory. 7. That as far as could be done thereby, the Treaty of Paris, a part of the supreme law of the land, conferred the final and exclusive power of determining the future of the Philippines upon Congress by providing that "*the* civil rights and *political status* of the native inhabitants of the territories hereby ceded to the United States *shall be determined by the Congress*" (Art. IX, par. 2). 8. That in American Insurance Company *v.* Canter, Mr. Chief Justice Marshall had said that if conquered territory "be ceded by treaty the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty

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of cession, or on such as its new master shall impose." [63]
9. That the President of the American Peace Commission, now a Justice of the Supreme Court, has said in explanation of the reservation in the Treaty of Paris: "It was thus undertaken to give Congress, as far as the same could be constitutionally done, a free hand in dealing with these new territories and their inhabitants." [64]
10. That the wishes of the inhabitants of the Philippine Islands need not be consulted in settling these questions.
Under the Constitution, under sovereignty, under the treaty of cession, and under political policy is a general premise that the future of the Philippines, whatever it may be, is given into the hands of Congress. As the other two departments, especially the judiciary to which the question would have to be taken for redress, would be loath to assume jurisdiction over what is so manifestly a legislative question of a political nature, this statement is strongly re-enforced from the practical standpoint. Let us, however, take up each phase of the subject more specifically.

[63] American Insurance Co. *v.* Canter (1828) 1 Pet. 542, 7 L. Ed. 242.

[64] Address of Hon. William R. Day before the Michigan Bar Association, May 23, 1900, p. 9, quoted in C. F. Randolph, Law and Policy of Annexation, p. 20. Same language used by Mr. Day as a Justice of the Supreme Court, in Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706. See Rasmussen *v.* U. S. (1905), 197 U. S. 516, 49 L. Ed. 862. "The clause at the end of the Ninth Article of the Treaty with Spain of 1898 was inserted therein for the sole purpose of giving to Congress the power to legislate in that manner. The recent and present administrations of the government of the United States have taken the position that under such article Congress has plenary power to establish by legislation the status of the inhabitants of Porto Rico, the Philippines and other territory recently acquired." Butler, Treaty-Making Power of the U. S., Vol. I, p. 281. Mabini, *La Revolución Filipina,* p. 75, also takes the position that Congress has absolute power to dispose of the Philippines.

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The right of the United States to admit the Philippine Islands into the Union as a State.

This is a contingency which is unlikely to happen. The United States has never committed or obligated herself to giving the Filipinos immediate or even ultimate statehood. The American people have never favored incorporation of an alien people living at a great distance into the family of states.[65] The Filipino people, with the decadence of the Federal Party, manifest no desire for such a status.[66]

Legally considered, and that is solely our task, no valid objection to the proceeding can be seen. The Federal

[65] "I say you will never consent to make the Philippine Islands an integral and organic part of the United States of America. . . . The objections to the plan are insuperable; the reasons against it invincible; the hostility to it ingrained and ineradicable. The grounds of this antipathetic attitude are fundamental and all-embracing; they are physical, physiological, ethnological, historical, psychological, social, and political." Philippine Affairs, A Retrospect and Outlook, an address by Jacob Gould Schurman, President of the First Philippine Commission, before the Members of Cornell University, p. 88. U. S. Senators and Congressmen have publicly opposed the incorporation of the Filipinos into the United States as a state. See Kalaw, The Case for the Filipinos, p. 48.

[66] "The international and constitutional right of the United States to incorporate and admit the Philippine Islands into the sisterhood of states once established, *should* the Philippines be so incorporated into the United States? The question is an open one. The author, however, is prepared to answer the question in the negative. And naturally so, because born and reared under the tender care of this, our mother country, and a living witness to her now past misfortunes and struggles against the tyranny and despotism of Spain, the author would much prefer to see the Philippine Islands serving an apprenticeship to liberty, taught the lessons of freedom, by degrees raised to the enjoyment and practice of independence, and ultimately brought to light as an independent and forever-free 'Pearl of the Orient,' trained in the knowledge of her own laws and institutions, than for her personality to be absorbed, her laws, customs, and traditions forgotten, consequent upon her becoming

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courts have often asserted that territory which comes under the control of the United States is never supposed to remain permanently in a territorial condition, because this would be inconsistent with the basic idea of self-government. Indeed, in the Dred Scott case, Mr. Justice Taney went so far as to announce the doctrine that territory could be acquired for no other purpose than to be converted into states.[67] However doubtful this theory may be, there is no disputing the fact than in other later cases, such as the Insular Cases, the United States Supreme Court has recognized that the Philippines could be incorporated into the United States when Congress shall see fit, and that they might "be introduced into the sisterhood of states." [68] But even such authority is un-

a state of the American Union. Nor will such incorporation, in the mind of the author, be an act calculated to subserve in any degree the interests of the American people, for obvious geographical, racial, social, and political reasons. It must be borne in mind, however, that the question is not grounded upon the policy or impolicy, or upon the desirability or undesirability of the incorporation, but upon the right, the constitutional right of the United States to incorporate the Philippine Islands into the Union of the United States, should such incorporation be deemed wise by the joint action of the American and Filipino peoples. The sole question, therefore, is Should the Filipino people so desire, could the United States, legally and constitutionally, incorporate the Philippine Islands into the Union of the United States? The constitutional history of the State of Louisiana answers the query in the affirmative." Laurel, What Lessons May Be Derived by the Philippine Islands from the Legal History of Louisiana, II Philippine Law Journal, August, 1915, pp. 8, 25. "Statehood for the Philippines is not desirable, either from the standpoint of the American or from that of the Filipino people. Differences in race, customs, interests, and the thousands of miles of water which separate both countries, are insurmountable obstacles to Philippine statehood. . . . The idea of statehood does not appeal to the Filipinos." Commissioner Quezon in Kalaw, The Case for the Filipinos, pp. 178, 179.

[67] Dred Scott *v.* Sandford (1857), 19 How. 393, 446, 15 L. Ed. 691.

[68] Downes *v.* Bidwell (1901), 182 U. S. 244, 283, 45 L. Ed. 1088;

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necessary, for the Constitution expressly grants to Congress the power to erect new states out of acquired territory to be received into the Union.[69] In this respect the power of Congress is without restriction. If, therefore, Congress should decide to take such a step for the Philippines, it would naturally first make them a regularly organized, incorporated territory. It could then pass an enabling act prescribing the conditions for admission. The constitution, although meeting these requirements, could thereafter be changed by the new state. The Philippines would necessarily be admitted on an equal footing with the other states.

The right of the United States to cede the Philippine Islands to a foreign power.

This, likewise, is a possibility which is unlikely to be seriously considered. The American people would never countenance the sale of the Philippines to another power, as Japan; public opinion would condemn such a cold-blooded transaction as incompatible with national honor; religious bodies would strongly oppose the proceeding; and the United States would lose commercially thereby with no reciprocal gains.[70] The Filipino people would

Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706; Rasmussen *v.* U. S. (1905), 197 U. S. 516, 49 L. Ed. 862.

[69] See Coyle *v.* Smith (1911), 221 U. S. 559, 55 L. Ed. 853.

[70] "The suggestion has been made that, in return for some compensation, the Islands might be handed over to Japan; but though this has seemed to some persons an excellent way for the Americans to escape from an embarrassing dilemma, in reality the idea is preposterous. Religious sentiments may not play in the political world so great a part as they once did, but it requires a stretch of the imagination to suppose that Christian-America would hand over some seven million fellow-Christians against their will to the rule of any non-Christian nation, however enlightened." Coolidge, The United States as a World Power, pp. 166, 167. "Only one probable purchaser has so far been suggested—Japan. What would be the

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stoutly resist being bartered off like chattels, would decry the transfer as a breach of faith in handing over a Christian people to one not Christian, and would regard it as a dastardly betrayal of American trust.[71] The revolt against Spain was not for the purpose of coming under

effect upon American industry if the Philippines should fall into the hands of Japan? . . . If the Islands should be sold to Japan, or are otherwise acquired by her, she could at once make the hemp industry a government monopoly, and increase the export duty to as high a point as would be possible without curtailing consumption. This could produce increased revenue which would be ample to take care of interest and sinking fund of a bond issue to purchase the Islands, and eventually might lead to the extinguishment of certain industries in the United States, and usurpation of their markets by hemp products manufactured in Japan. . . . What might happen, in respect to sugar, if Japan should take the Philippines? Is it not reasonable to suppose that Japanese labor would be imported to till the plantations, and that sugar refineries of Japan, which already enjoy the protection of government monopoly, would get a further advantage over the American sugar industry in competing in the world's market? . . . There is one moral factor attached to a sale of the Islands which many persons apparently have overlooked; the ethical difficulty involved in turning over a Christian people to be governed by a pagan power; which probably will be the fate of these Islands should the United States ever, for any reason, entirely cast them loose." Millard, America and the Far Eastern Question, pp. 484, 485. Oscar F. Williams, An Imperial Dicker, 54 Ind. Apr. 17, 1902, p. 903, suggests a trade with Great Britain; the same magazine, Vol. 64, Feb. 27, 1908, p. 475, asserts that the Philippines are not for sale; but it harks back to the old idea of a trade with Great Britain in an article by Edwin E. Slosson, Why Not Swap the Philippines for Something Nearer Home? Vol. 85, Feb. 28, 1916, p. 301.

[71] "But aside from considerations of history and religion, the peaceable transfer of the Philippines to any one without the consent of the inhabitants is now barely conceivable. The people have too much national self-consciousness, and they have been treated too long as intelligent beings with a right to take part in shaping their own destinies, for them to be calmly bartered off like cattle. The public conscience in America would never permit such a transaction and there is no real indication that the Filipinos would prefer any

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the dominion of the United States. The Filipinos do not wish for liberation from the United States in order to belong to some other power. No country so far as known has ever signified a desire to purchase the Philippines from the United States.

Probably the most authoritative statement on the question by reason of the place and the man was that of Hon. William H. Taft, when as Secretary of War, in an address at Tokio, Japan, on September 30, 1907, he said: "It (the government of the Philippines) is a task full of difficulty and one of which many Americans would be glad to be rid. It has been suggested that we might relieve ourselves of this burden by a sale of the Islands to Japan or some other country. The suggestion is absurd. Japan does not wish the Philippines. She has problems of a similar nature nearer home. But, more than this, the United States could not sell the Islands to another power without the grossest violation of its obligation to the Philippine people. It must maintain a government of law and order and the protection of life, liberty and property itself or fit the people of the Islands

other foreign rule. They did not revolt against Spain for the purpose of coming under the United States, and they are not hoping for liberation from the dominion of the United States in order to belong to some other power under whom they might easily fare worse. What the discontented elements demand is liberty to manage their own affairs, and the mere suggestion that their country is regarded as salable property is enough to excite their legitimate anger." Coolidge, The United States as a World Power, p. 167. "While Japan is an enlightened nation and while the traditions of the American people discountenance any tendency to religious discriminations, she being a heathen nation and America a Christian nation, the latter should not hand over to the former the destiny of eight million Christian souls." Javier Gonzalez, The Neutrality of the Philippines, 5 *Cultura Filipina,* May, 1915, p. 79. Read also Aguinaldo's protest of June 10, 1898, against a rumored sale of the Philippines to Great Britain, quoted in note 29 to sec. 67 *supra.*

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to do so and turn the government over to them. No other course in honor is open to it." [72] At the inauguration of the Philippine Assembly a little later, he explained his thought more fully as follows:

"Before discussing the Assembly, I wish to give attention to one report that has been spread to the four corners of the globe, and which, if credited, might have a pernicious effect in these Islands. I refer to the statement that the American government is about to sell the Islands to some Asiatic or European power. Those who credit such a report little understand the motives which actuated the American people in accepting the burden of this government. The majority of the American people are still in favor of carrying our Philippine policy as a great altruistic work. They have no selfish object to secure. There might be a grim and temporary satisfaction to those of us who have been subjected to severe criticism for our alleged lack of liberality toward the Filipino people and of sympathy with their aspirations, in witnessing the rigid governmental control which would be exercised over the people of the Islands under the colonial policy of any one of the powers to whom it is suggested that we are about to sell them; but that would not excuse or justify the gross violation, by such a sale, of the implied obligation which we have entered into with the Filipino people. That obligation presents only two alternatives for us—one is a permanent maintenance of a popular government of law and order under American control, and the other, a parting with such control to the people of the Islands themselves after they have become fitted to maintain a government in which the right of all the inhabitants to life, liberty and property shall be secure. I do not hesitate to pronounce the report that the government contemplates the transfer of these Islands to any

[72] Printed in Taft, Present Day Problems, pp. 57, 58.

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foreign power as utterly without foundation. It has never entered the mind of a single person in the government responsible for the administration. Such a sale must be the subject of a treaty, and the treaty power in the Government of the United States is exercised by the President and the Senate, and only upon the initiative of the President. Hence an Executive declaration upon this subject is more authoritative than an Executive opinion as to probable Congressional action." [78]

Again turning to the legal phases, no valid objection to a cession of the Philippines can be seen. Of course, it is true that there is no express provision of the Constitution authorizing a transfer of territory in the possession of the United States to another power. No precedent can be pointed to in which the United States alienated territory indisputably its own to another country. But neither was there an article in the Constitution authorizing acquisition of territory, and neither was there a precedent when Louisiana was purchased, but yet acquisition is recognized as an inherent attribute of the American government. If sovereignty permits the United States to secure additional domain, conversely the same correlative right of sovereignty must permit the United States to dispose of its territory. If the President can initiate a treaty to annex territory and the Senate can approve the treaty, obviously the President and the Senate can, by the same means, cede territory. While acquisition is naturally more pleasing to imperialistic patriotism than cession, the latter is legally just as constitutional. The higher law of national expediency, benefits, or necessity must govern the dealings of one country with another. As the United States Supreme Court has said: "It certainly was intended to confer upon the government

[78] Printed in Taft, *id.*, pp. 32, 33.

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the power of self-preservation." [74] What other great nations have done the United States can do.[75]

Since as yet merely an academic question decisive authority is lacking. One line of cases has suggested that the authorization of the state within which the ter-

[74] Legal Tender Cases (1871), 12 Wall. 457, 20 L. Ed. 287. "The treaty power is in a measure incidental to the war power, and under the necessity for national preservation, or even for national benefit, many things can be done that are not explicitly enumerated in the constitution." Devlin, The Treaty Power Under the Constitution of the United States, pp. 140, 141.

[75] "The right of sovereign powers to cede territory to, and to acquire territory from, other sovereign powers, with the accompanying transfer of sovereignty thereover, is one of the elementary principles of international law. It is essential, however, that the contracting powers should be fully sovereign in order to act either as transferrer or transferee." Butler, Treaty-Making Power of the United States, Vol. I, p. 72. "There is a presumption against the propriety of alienating national territory, and this is generally conclusive where the territory has been deliberately acquired, or long occupied, or, above all, where it is identified with the rest of the country through national unity and community of interest. These considerations are not pertinent in the case of the Philippines. At the outbreak of the war with Spain the American people neither wished nor expected to annex the Islands, and, whatever personal expectations of aggrandizement may have lurked behind the plan of campaign in the East, the Administration, though it will not plead ignorance of a probable opportunity, maintains that aggrandizement was not intended. . . .

"The constitutions of some countries forbid any alienation of territory. . . . Generally, and invariably among the stronger nations, with the right to acquire land there is, logically, a right to cede it. And voluntary cession is not unexampled: Witness the cession of Louisiana by France to the United States, of Alaska by Russia to the United States, of Java and Heligoland by Great Britain to Holland and Germany respectively, of St. Bartholomew by Sweden to France. . . . Each country determines for itself the procedure in regard to cession. Some constitutions, that of France among them, require treaties of cession to be submitted to the legislature. The Judicial Committee of the Privy Council is strongly of the opinion that the treaty-making body of Great Britain—the

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ritory is situated would have to be obtained before cession of political jurisdiction can be made to a foreign power.[76] As other authorities have refuted the theory, the stand is made stronger for territory like the Philippines which is not within the boundaries of any state.[77] But this question is beyond the point as to the Philippines. Neither is the argument of Mr. Justice White in Downes *v.* Bidwell applicable, because that concerned territory which is "an integral part of the United States," and the Philippines have been held by the United States Supreme Court to be an unincorporated territory—thereby conceding, in a way, that because of their status the Philippines might be sold or traded.[78] Moreover, in the same

Crown in Council—has full power to cede territory, and this seems to be justified by common precedent; nevertheless, in 1890, the Crown asked the consent of Parliament before ceding Heligoland to Germany." C. F. Randolph, Law and Policy of Annexation, pp. 144 *et seq.*

[76] See Fort Leavenworth R. R. Co. *v.* Lowe (1885), 114 U. S. 525, 29 L. Ed. 264; Geofroy *v.* Riggs (1890), 133 U. S. 258, 33 L. Ed. 642.

[77] See Lattimer *v.* Poteet (1840), 14 Pet. 4, 10 L. Ed. 328; Kent's Commentaries, Vol. I, p. 167, note (b); Willoughby on the Constitution, Vol. I, pp. 512, 513.

[78] 182 U. S. 244, 315, 45 L. Ed. 1088, 1117 (1901)—in which it is said: "In conformity to the principles which I have admitted it is impossible for me to say at one and the same time that territory is an integral part of the United States protected by the Constitution, and yet the safeguards, privileges, rights, and immunities which arise from this situation are so ephemeral in their character that by a mere act of sale they may be destroyed. And applying this reasoning to the provisions of the treaty under consideration, to me it seems indubitable that if the treaty with Spain incorporated all the territory ceded into the United States, it resulted that the millions of people to whom that treaty related were, without the consent of the American people as expressed by Congress, and without any hope of relief, indissolubly made a part of our common country.

"Undoubtedly, the thought that under the Constitution power to

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series of cases, Mr. Justice Brown remarked that when territory is "once acquired by treaty, it belongs to the United States, and is *subject to the disposition of Con-*

dispose of people and territory, and thus to annihilate the rights of American citizens, was contrary to the conceptions of the Constitution entertained by Washington and Jefferson. In the written suggestions of Mr. Jefferson, when Secretary of State, reported to President Washington in March, 1792, on the subject of proposed negotiations between the United States and Spain, which were intended to be communicated by way of instruction to the commissioners of the United States appointed to manage such negotiations, it was observed, in discussing the possibility as to compensation being demanded by Spain 'for the ascertainment of our right' to navigate the lower part of the Mississippi, as follows:

"'We have nothing else' (than a relinquishment of certain claims on Spain) 'to give in exchange. For as to territory, we have neither the right nor the disposition to alienate an inch of what belongs to any member of our Union. Such a proposition therefore is totally inadmissible, and not to be treated for a moment.' Ford's Writings of Jefferson, Vol. 5, p. 476.

"The rough draft of these observations was submitted to Mr. Hamilton, then Secretary of the Treasury, for suggestions, previously to sending it to the President, some time before March 5, and Hamilton made the following (among other) notes upon it:

"'Page 25. It is true that the United States have no right to *alienate an inch* of the territory in question, except in the case of necessity intimated in another place? Or will it be useful to avow the denial of such a right? It is apprehended that the doctrine which restricts the alienation of territory to cases of *extreme necessity* is applicable rather to *peopled* territory than to waste and uninhabited districts. Positions restraining the right of the United States to accommodate to exigencies which may arise ought ever to be advanced with great caution.' Ford's Writings of Jefferson, Vol. 5, p. 443.

"Respecting this note, Mr. Jefferson commented as follows:

"'The power to alienate the *unpeopled* territories of any state is not among the enumerated powers given by the Constitution to the general government, and if we may go out of that instrument and *accommodate to exigencies which may arise* by alienating the *unpeopled* territory of a state, we may accommodate ourselves a little more by alienating that which

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gress." [79] But again the question before the court in the Insular Cases does not directly decide the point under consideration for the Philippines. We gain a little light when we find that several treaties concerning boundary disputes have surrendered areas claimed by the United States to foreign powers, even going so far as to make use of words of cession.[80] Outside of this we also find

is *peopled,* and still a little more by selling the *people* themselves. A shade or two more in the degree of exigency is all that will be requisite, and of that degree we shall ourselves be the judges. However, may it not be hoped that these qeustions are forever laid to rest by the 12th Amendment once made a part of the Constitution, declaring expressly that "the powers not delegated to the United States by the Constitution are reserved to the states respectively?" And if the general government has no power to alienate the territory of a state, it is too irresistible an argument to deny ourselves the use of it on the present occasion.' *Ibid.*

"The opinions of Mr. Jefferson, however, met the approval of President Washington. . . .

"True, from the exigency of a calamitous war or the necessity of a settlement of boundaries, it may be that citizens of the United States may be expatriated by the action of the treaty-making power, impliedly or expressly ratified by Congress.

"But the arising of these particular conditions cannot justify the general proposition that territory which is an integral part of the United States may, as a mere act of sale, be disposed of."

[79] De Lima *v.* Bidwell (1901), 182 U. S. 1, 196, 45 L. Ed. 1041, 1056.

[80] "Art. III of the Adams-de Onis Treaty of 1819 with Spain (U. S. Tr. and Con. 1889, p. 1016) after describing the then boundary line west of the Sabine River to the Pacific Ocean concludes as follows (p. 1017):

" 'The two high contracting parties agree to *cede* and renounce all their rights, claims and pretensions, to the territories described by the said line that is to say: The United States hereby *cede* to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions, to the territories lying west and south of the above-described line; and, in like manner, His Catholic Majesty *cedes* to the said United States all his rights, claims, and pretensions to any territories east and north of the said line, and for himself, his

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legislative opinion, judicial *dicta,* and text-book conclusion. Thus when the Federal Constitution was before the convention of the State of Virginia for ratification, Governor Edmund Randolph, opposing a proposed amendment regulating treaties ceding, contracting, restraining, or suspending the territorial rights or claims of the United States, said: "There is no power in the Constitution to cede any part of the territories of the United States." [81] But when the treaty for the Louisiana purchase was before Congress, Mr. Nicholson, speaking for the administration, said: "The territory was purchased by the United States in their confederate capacity, and may be disposed of by them at their pleasure." [82] Again in the case of Geofroy *v.* Riggs which set forth the doctrine as to the consent of a state being a prerequisite to cession, it was admitted that "with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." [83]

heirs, and successors, renounces all claim to the said territories forever.'

"By this treaty the United States renounced, or *ceded,* a large tract which included the whole Texas, as well as a great deal of the Mexican Territory which was ceded to the United States by the Treaty of Guadalupe Hidalgo in 1848 after the Mexican war." Butler, Treaty-Making Power of the United States, Vol. 2, pp. 192 *et seq.*

[81] See Snow, The Administration of Dependencies, p. 470.

[82] Annals of Congress, 1803-4, p. 471, quoted in Magoon's Reports, p. 78.

[83] 133 U. S. 258, 33 L. Ed. 642 (1890). "Similar expressions may be found in many cases in which, while the treaty-making power has never been accurately defined, the wide field that it covers is fully recognized. . . . The national government, being invested with the powers that appertain to independent nations, may, in dealing with foreign nations, exercise such powers as may be necessary for the maintenance of its independence and security." Devlin, The Treaty Power Under the Constitution of the United States, pp. 137, 138.

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Again when Edward Everett, then Governor of Massachusetts, confidentially asked the opinion of Mr. Justice Story concerning a resolution of the Massachusetts Legislature, in which it was declared that no power delegated to the Constitution of the United States authorized the government to cede to a foreign nation any territory lying within the limits of a state of the Union, Mr. Justice Story in his reply recalled a conversation previously had on the subject with Mr. Chief Justice Marshall. "He was," said Mr. Justice Story, "unequivocally of the opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases; yet he did not doubt it must be construed to extend to some." [84] Finally a strong argument could be put forth predicated on the clause of the Constitution, empowering Congress "to dispose of" territory. Although other corroborative authority could be cited, it would seem more logical and consistent to base the right of the United States to alienate unincorporated territory on the fundamental principle of sovereignty, re-enforced to an extent by the very fact that territory in this position is not yet a part of the United States.

If the Philippines should be ceded to a foreign power, which as said is unlikely, the proper procedure would be by treaty. If the treaty were accomplished by the two high parties, a citizen could with difficulty restrain ful-

[84] See Life and Letters of Joseph Story, Vol. II, pp. 286-289, quoted in 5 Moore, International Law Digest, p. 172. Among other authorities, Mr. Randolph said: "Outlying territory the Federal Government is as free to cede, as to acquire without the express consent of the states. As I have found no legal objection to our treaty-making body annexing land without the consent of the House of Representatives, I find none to its ceding land of its own motion." C. F. Randolph Law and Policy of Annexation, pp. 144, 148. See generally Willoughby on the Constitution, pp. 507 *et seq.*

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fillment. If perchance the question could be brought before the courts, a strong, and it is believed a convincing, argument could be put forward for the affirmative of the question.

The right of the United States to declare the Philippine Islands independent.[85]

Unlike the other two possibilities which we have discussed, this is the contingency most likely to take place. The great majority of the American people, while differing as to dates and methods, have looked forward to an independent existence for the Philippines. It was the President of the first Philippine Commission who said: "The destiny of the Philippine Islands is not to be a state or territory in the United States of America, but a daughter republic of ours—a new birth of liberty on the other side of the Pacific, which shall animate and energize those lovely Islands of the tropical seas, and, rearing its head aloft, stand as a monument of progress and a beacon of hope to all the oppressed and benighted millions of the Asiatic continent." [86] Public opinion as represented by its electoral delegates has crystalized into an official American policy.[87] The Congress of the United States has formally declared the purpose of the United States to make the Philippines ultimately independent. Public opinion in the Philippines as represented by the press and in popular assemblies has protested again and again the desire of the Filipino people for independence. Their accredited representatives, the Philippine Assembly and

[85] See generally Willoughby *id.*, various citations, and 178 No. Am. Rev., Aug. 1904, p. 282, "Can Congress Constitutionally Grant Independence to the Filipinos?" I. "It can." II. "It cannot."

[86] Philippine Affairs, A Retrospect and Outlook, an address by Jacob Gould Schurman, President of the First Philippine Commission, before the members of Cornell University, p. 87.

[87] See sec. 79, *supra.*

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the Resident Commissioners to the United States, have solemnly and unequivocally so stated by resolution, petition, and address. It was Speaker Osmeña who on the occasion of the closing of the first Philippine Assembly said: "Permit me, gentlemen of the Chamber, to declare solemnly before God and before the world, upon my conscience as a deputy and representative of my compatriots, and under my responsibility as president of this Chamber, that we believe the people desire independence, that it (the Philippines) believes itself capable of leading an orderly existence, efficient both in internal and external affairs, as a member of the free and civilized nations." Thus with the two peoples most vitally concerned meeting on a common ground and with no third people likely to interfere, independence for the Philippine Islands would seem to be on the high road to accomplishment.

Once again, turning to the legal phases of the question, no valid objection to the United States declaring the Philippine Islands to be a free and independent republic can be seen. Like the other points we have discussed, it is true that there is no provision in the Constitution which authorizes the United States to withdraw its sovereignty from territory once acquired and to erect thereon another sovereign entity. No previous action identical to what would take place if the Philippine Islands were recognized as independent can be found in the historical records of the United States. Either territory was retained, or as in the case of Cuba, the government of the United States was merely an intermediary between two principals, taking something from one and handing it over to the other.

When we endeavor to resolve the question by means of authority, we gain little additional light. As before remarked, Mr. Justice Taney expressed the view in the Dred Scott case[88] that territory is acquired to become

[88] Dred Scott *v.* Sandford (1857), 19 How. 393, 15 L. Ed. 691. See sec. 82 *supra,* note 12, and Magoon's Reports, pp. 81 *et seq.*

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a state of the Union which, of course, conversely means that territory is not acquired in order to be relinguished for independent existence. One should, however, recollect in connection with this case that it went upon the assumption that the right to acquire territory is derived from the power to admit states, that this is the only case in which this proposition has ever been accepted, and that it is counter to the opinions of Marshall and a long list of jurists and has since been judicially ignored—remembering all this, the language of Taney whether *dictum* or not loses its force. The most authoritative expression of judicial opinion on the other side is that of Mr. Justice Brown in the Insular Cases where he suggests that the Philippines and Porto Rico "might be permitted to form independent governments." [89]

Careful analysis reaching back to other settled constitutional doctrines are here preferable. If, therefore, the United States can acquire or cede territory without express constitutional authority, why can not the same sovereign power, which permits of such action, likewise permit unincorporated territory to be made independent? What difference is there between cession to another foreign power and cession to another people temporarily under American control? If the United States could by treaty pass on the boon of freedom to Cuba, why can it not a few years later under the power reserved by the same treaty to Congress, pursuant to this power, hand over a similar right to the Philippines? If the freeing of the Philippines is deemed wise from the standpoint of national necessity, or advantage, or for reasons which take into consideration benefits to the Filipino people,

[89] Downes *v.* Bidwell (1901), 182 U. S. 244, 283, 45 L. Ed. 1088. "Should the alienation be by the way of granting independence to a particular territory, as, for example, Porto Rico or the Philippine Islands, this could be done by joint resolution." Willoughby on the Constitution, Vol. I, p. 513.

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what individual citizen can be heard to complain? If other sovereign powers can recognize former portions of their territory as independent, because forced to do so, why can not the United States as a power of equal rank recognize the Philippines as a republic, because she wishes to do so? And if Congress or its agent, the President, shall recognize the Philippines to be a sovereignty, how long on such a political question would a litigant have standing in a court? Plain answers to these interrogatories, if the premises be conceded, must, by a logic inexorable and final, lead to an affirmative conclusion. And the premises, it is believed, can not be undermined.

It is respectfully submitted that the United States has a legal and constitutional right to admit the Philippine Islands into the Union as a state, or to cede the Philippine Islands to a foreign power, or to declare the Philippine Islands independent.

§ 88. Application to constitutional relation of the Philippines to the United States.—Direct application of all the constitutional principles here stated to the situation of the Philippines can be made. It is settled that—

1. The United States, as a sovereign power, and as necessary and proper to the carrying out of the express constitutional powers to declare war and to make treaties, had the legal right to acquire the Philippines by treaty.

2. The United States, as a consequence of the power to acquire territory, as a result of the fact that the territory is not within the jurisdiction of any particular state, and as a power delegated to Congress by the Constitution, has the legal right to govern the Philippines.

3. The power to govern the Philippines rests with Congress which can exercise the same directly or through a local government. This power, while of wide extent, is not unlimited and is restrained by certain fundamental constitutional prohibitions which go to the root of the

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power of Congress to act at all, and by certain other moral and natural rights, outside of the Constitution.

4. While up to the Spanish-American War, treaties of cession had shown a purpose to incorporate territory into the United States, eventually leading to statehood, the treaty of peace with Spain contained no such executory provision as to the Philippines, but left future disposition to Congress.

5. While likewise up to the Spanish-American War the Constitution and the laws of Congress had been extended to the territories by law, the Constitution and Acts of Congress did not *ex proprio vigore* have force in the Philippines and were not sent there by Act of Congress.

6. The Philippine Islands are not in the nature of a foreign country in their relation to the United States. Neither did the Philippines on annexation become an integral part of the United States.

7. The United States has a legal and constitutional right to admit the Philippine Islands into the Union as a state, or to cede the Philippine Islands to a foreign power, or to declare the Philippine Islands independent.

Numerous cases concerning the Philippines, as will be seen later, have followed, applied, and expanded these propositions.

§ 89. Congressional control.—The same general principles have been followed in the action taken by Congress for the administration of the territories. The Northwest Ordinance and the act for the government of Louisiana were the models. Subsequent legislation was only modified to apply to new conditions. One is not surprised to find such Congressional Acts following the general lines of state governments, this being the form most familiar to Congress and apparently deemed most

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suitable. Congress could, however, prescribe a different form if it so chose.[90]

In practice, Congress has not adopted a policy of petty interference with the territories and the insular administration in the Philippines. The Islands are practically removed from the field of Congressional action. As Mr. Chief Justice Chase in the course of an opinion, in which he described the territorial governments, said: "The theory upon which the various governments for portions of the territory of the United States have been organized, has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of national authority, and with certain fundamental principles established by Congress." [91]

Congress in exercising its authority directly over territories and over the Philippines can, of course, nullify or change what it has created. "Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void." [92]

In the Philippine Bill it was provided "That all laws passed by the Government of the Philippine Islands shall be reported to Congress, which hereby reserves the power and authority to annul the same." [93] With a slight change in phraseology, the Philippine Autonomy Act continues the same idea.[93a] This does not mean that Acts of the Philippine Legislature are suspended until approved by Congress. On the contrary, the uniform

[90] Binns *v.* U. S. (1904), 194 U. S. 491, 48 L. Ed. 1087.
[91] Clinton *v.* Englebrecht (1872) 13 Wall. 434, 441, 20 L. Ed. 659.
[92] First National Bank *v.* County of Yankton (1879) 101 U. S. 129, 25 L. Ed. 1046.
[93] Act of Congress, July 1, 1902, sec. 86.
[93a] Act of Congress, August 29, 1916, sec. 19.

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policy [94] since the establishment of the government of the United States has been to regard enactments of territorial legislatures as having full force, until they have been expressly or impliedly annulled by an appropriate Act of Congress. Acts of the Philippine Legislature, therefore, are valid acts, until disapproved by Congress or held invalid by the Courts.

Still, what is important is, that Congress possesses the right of legislative veto.

§ 90. Presidential control.—The President of the United States possesses executive control over both the civil government of the Philippines and the military forces in the Islands. He retains the first by virtue of the power of appointment and removal and the enforcement of the positive provisions of the laws. The President as commander in chief of the Army and Navy likewise retains superior authority over the military organizations in the Philippines. The Governor-General is responsible [95] for his administration to the people of the United States through the President. The Commanding General is responsible [96] for his administration in the Philippines through the Secretary of War to the President.

Further than this, whether or not the President has veto power over all Acts passed by the Philippine Legislature is a moot question. Some have argued that the Chief Executive does possess this right as one retained by the President in his Instructions to the Commission, since confirmed by Congress, and never relinquished.[97] Others

[94] See Miners Bank *v.* Iowa (1851) 12 How. 1, 13 L. Ed. 867; U. S. *v.* Bull (1910) 15 Phil. 7, 29; Op. Judge Advocate General, Sept. 30, 1909; 26 Op. Atty. Gen. U. S. 91, 97, quoted with approval in Gromer *v.* Standard Dredging Co. (1912) 224 U. S. 362, 371, 56 L. Ed. 801.

[95] Severino *v.* Governor-General (1910) 16 Phil. 366.

[96] Tan Te *v.* Bell (1914) 27 Phil. 354.

[97] Published Opinion of Judge L. M. Southworth in the Manila Press.

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have contended that the Chief Executive does not possess this right, because the veto power of the President is one of constitutional grant, and, being of such a nature, it can not be exercised where the Constitution is not in force, as in the Philippines; the veto power of the President is, by express declaration of the Constitution, made applicable only to the Acts of Congress, and inasmuch as the Acts of the Philippine Legislature are not Acts of Congress, said right can not be exercised over the Acts of the Philippine Legislature; the Government of the Philippine Islands is an agency of Congress, and it is therefore Congress alone that can determine what laws must be permitted in the Philippines; and finally, the President has a mere executive control over the Insular Government and such control does not necessarily include the authority to set aside an enactment of the legislature, unless expressly authorized by law to do so.[98] Whichever be the correct view, the President has never attempted to exercise this prerogative. He only acts when the law so requires; as for instance pursuant to sections nine and ten of the Philippine Autonomy Act which makes his approval necessary before bills relating to the public lands, timber, mining, the tariff, immigration, and the currency can become laws. The President also is the final arbiter in case of appeal of the Philippine Legislature from a veto by the Governor-General.

Here again, as in connection with Congressional control, what is important is not the activity of the President but the fact that he possesses the right of executive supervision.

[98] Thesis of Vicente del Rosario entitled "Has the President of the United States Veto Power over the Acts Passed by the Philippine Legislature?" submitted for the degree of Bachelor of Laws from the University of the Philippines.

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§ 91. The Bureau of Insular Affairs.[99]—Both the Attorney-General of the Philippine Islands and the Attorney-General of the United States have definitely held that "the Government for the Philippine Islands should be regarded as a branch of the War Department." [100] Cabinet officials other than the Secretary of War, as for instance the Postmaster-General, in an attempt to issue orders to the Bureau of Posts of the Philippine Islands,[101] have no authority over the Government of the Islands. Exceptions are the Secretary of the Treasury who through the United States Public Health Service has control over the Bureau of Quarantine Service and the Coast and Geodetic Survey of the United States which directs the work of the Bureau of Coast and Geodetic Survey.[101a] All other regulations from Washington of whatever sort pass through the War Department. "From the time the United States forces first took possession of these Islands down to the present time, the President of the United States appears to have exercised such powers as he possessed and as it was found necessary to exercise, as Commander in Chief of the Army and Navy, in the Islands,

[99] See Annual Reports, Chief, Bureau of Insular Affairs; Reports, Secretary of War, especially 1901; Testimony, General McIntyre, Chief, Bureau of Insular Affairs, before the Committee on the Philippines, U. S. Senate, 63d Congress, 3d sess., p. 5; C. R. Edwards, former Chief of the Bureau of Insular Affairs, The Work of the Bureau of Insular Affairs, XV National Geographic Magazine, pp. 239-255, 273-284; Memorandum, War Department, Mar. 4, 1914; Willoughby, Territories and Dependencies of the United States, pp. 321, 322.

[100] 24 Op. Atty. Gen. U. S. 534; 4 Op. Atty. Gen. P. I. 205; Op. Atty. Gen. P. I. Apr. 22, 1914.

[101] 4 Op. Atty. Gen. P. I. 205 confirmed in 4 Op. Atty. Gen. P. I. 377 and 5 Op. Atty. Gen. P. I. 538; 24 Op. Atty. Gen. U. S. 534; 29 Op. Atty. Gen. U. S. 380.

[101a] Administrative Code of the Philippine Islands, secs. 937, 938, 1152.

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through the War Department and through the Secretary of War, and not through the Secretary of the Treasury.[102] The Secretary of War is also granted certain positive powers as the right to make final decision on appeals from the rulings of the Insular Auditor, confirmed by the Governor-General.[102a] The Philippine Autonomy Act would permit the President to place the Philippine Government under some department other than the War Department, if he so elected.

To assist the Secretary of War in administrative supervision of the Insular Possessions there was early created a Division of Insular Affairs.[103] The Philippine Bill, continuing the Division as "the Bureau of Insular Affairs of the War Department," provided that "the business assigned to said Bureau shall embrace all matters pertaining to civil government in the island possessions of the United States subject to the jurisdiction of the War Department." [104] The Chief of the Bureau of Insular Affairs is appointed by the President for a period of four years; while holding office he has the rank and pay of a brigadier-general.[104a] Two assistants, one with the rank of colonel and the other of major, are detailed to the Bureau.[104b]

The Bureau of Insular Affairs thus has some resemblance to colonial departments as existing in foreign governments. Its oversight extends to the purely civil ad-

[102] *In re* Allen (1903) 2 Phil. 630, 636; Adm. Code, sec. 75.

[102a] Philippine Autonomy Act, secs. 24, 25.

[103] See Report, Secretary of War Root, 1901.

[104] Act of Congress, July 1, 1902, sec. 87. Ex. Or. of the President placed Porto Rico under the supervision of the Bureau of Insular Affairs.

[104a] Act of Congress, June 25, 1906, 34 Stat. at L. 456.

[104b] Act of Congress, March 2, 1907, 34 Stat. at L. 1162; Act of Congress March 23, 1910, 36 Stat. at L. 248. See U. S. Comp. St. 1913, Tit. 6, Ch. C.

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ministrations in the Philippines and Porto Rico; formerly to Cuba and Santo Domingo. It furnishes the President, the Secretary of War, Congress, and the public with information as to the Philippines and Porto Rico. A former Assistant Chief of the Bureau gives other duties as follows:

"The Bureau constitutes the official repository of information concerning these dependent people and its Chief advises and consults with the Secretary of War regarding all Federal matters affecting our island possessions. Most of the legislation proposed in Congress is prepared or suggested by the Bureau and submitted by the Secretary of War. . . . The financial operations of these governments, especially the Philippines, place a direct responsibility upon the War Department, first, in floating bond issues; second, in guarding their deposits in this country; and third, in purchasing supplies which are required by the Government and either unobtainable in Manila and San Juan or only at prohibitive prices. . . . In its relation to the appointive personnel of the Philippine Government the Bureau, upon the recommendation usually of the Governor-General or Bureau primarily concerned, selects all but the highest officials who are appointed in the United States."[105]

Insofar as the Bureau of Insular Affairs and the War Department have anything to do with policies, the aim "has been to foster autonomous governments in the Islands subject to its jurisdiction, to avoid interference with the governments there established, and to protect such governments insofar as possible from interference by other departments and branches of our government."[106]

[105] Remarks of Major Hunt, U. S. A., before the Lake Mohonk Conference, Oct. 23, 1910, pp. 162, 163.

[106] Memorandum, War Department, Mar. 4, 1914.

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§ 92. Resident commissioners to the United States.[107]—The Philippine Bill provided for two Resident Commissioners to the United States to be chosen at the first meeting of the Philippine Legislature, which actually occurred in 1907. These positions were created to offset the control of the President and Congress by giving the Filipino people representation in the United States. The Philippines in this respect were placed in the category of territories.

To be eligible for the position of Resident Commissioner, a person must be a qualified elector of the Islands, owing allegiance to the United States, thirty years of age or over, and able to read and write the English language. They are chosen by the Assembly and the Senate voting separately.[108] This method results in practice in the lower house selecting one Commissioner and the upper house the other. In case of vacancy the Governor-General appoints until the next meeting of the Philippine Legislature. The term of office was first two years, later changed to four years beginning with March 4, 1913, and now by the Philippine Autonomy Act fixed at three years beginning with March 4, 1917, and trienially thereafter. The salary is made the same as that for the Resident Commissioner from Porto Rico—$7,500.00 (₱15,000) per annum—with provision for a similar sum for stationery, mileage, and clerk hire, as allowed the members of the House of Representatives, with the franking privilege also enjoyed by members.[109] These moneys come out of

[107] See Act of Congress, July 1, 1902, sec. 8; Act of Congress, Feb. 15, 1911, sec. 2; Administrative Code of the Philippine Islands, secs. 120-122; Philippine Autonomy Act, sec. 20.

[108] Procedure prescribed in Joint Resolution No. 2, Nov. 22, 1907; Adm. Code, sec. 122.

[109] Act of Congress, May 22, 1908, sec. 1, in connection with Act of February 26, 1907; Annual Appropriation Acts of Congress; Philippine Autonomy Act, sec. 20.

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the Treasury of the United States. The Philippine Legislature also provides for a private secretary for each of the Resident Commissioners, a portion of whose salaries are paid out of Insular funds.[110]

The law entitles a Resident Commissioner to official recognition by all departments of the United States. The Commissioners have also a seat in Congress and the right there to be heard but not to vote. Their larger function has naturally been to voice the needs and aspirations of the Filipinos before Congress, before the President, and before the American public.

[110] Act 1802 and annual Appropriation Acts.

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The Insular Cases, 182 U. S. 1, 45 L. Ed. 1041, and printed together in a volume.

Philippine Autonomy Act of August 16, 1916.

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CHAPTER 7.

THE STATUS OF THE PHILIPPINES.[1]

§ 93. Status of other non-contiguous territory of the United States.
94. Whether the Philippines are a foreign country.
95. Whether sovereign or semi-sovereign.
96. Whether a state or territory of the United States.
97. Whether a colony, dependency, or possession.
98. Whether part of the United States in an international sense.
99. The case of United States versus Bull.
100. Whether legally organized.
101. Whether Filipinos are aliens, subjects, or citizens.
102. Status stated.

§ 93. Status of other non-contiguous territory of the United States.[1a]—The mainland included within the boundaries of the United States proper is now made up of States, and the District of Columbia, specially created for the national capital. Outside of this compact territory are other units not States related in some manner to the national government.

Taking these up in order of nearness to the constitutional relation, there is Alaska for many years an unorganized but incorporated district or territory recently made into an organized territory of the United States.[2] Hawaii is likewise technically an incorporated organized

[1] Originally appeared in XIV Michigan Law Review, May, 1916, p. 529.

[1a] See generally 38 Cyc. 192-197; Bryce, The American Commonwealth, Rev. Ed., Vol. II, Ch. XCVII.

[2] See Willoughby, Territories and Dependencies of the United States, pp. 74-78; Coquitlam *v.* U. S. (1895), 163 U. S. 346, 41 L. Ed. 184; Rasmussen *v.* U. S. (1904), 197 U. S. 516,

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territory.[3] Porto Rico differs from Alaska and Hawaii in that while substantially an organized territory it is not fully incorporated into the United States. The United States Supreme Court has said of the present status of Porto Rico: "It may be justly asserted that Porto Rico is a completely organized territory, although not a territory incorporated into the United States, and that there is no reason why Porto Rico should not be held to be such a territory."[4]

49 L. Ed. 862; Interstate Commerce Commission *v.* Humbolt Steamship Co. (1911), 224 U. S. 474, 56 L. Ed. 849; Act of Congress, Aug. 24, 1912, 37 Stat. at L. Ch. 387, p. 512.

[3] See McKinley, Island Possessions of the United States, Ch. VII; Willoughby, Territories and Dependencies of the United States, pp. 60-70; 31 Stat. at L. Ch. 339; Hawaii *v.* Mankichi (1903), 190 U. S. 197, 47 L. Ed. 1016; Kawananakoa *v.* Polyblank (1906), 205 U. S. 349, 51 L. Ed. 834.

[4] New York ex rel. Kopel *v.* Bingham (1908), 211 U. S. 468, 476, 53 L. Ed. 286. "Porto Rico is substantially a territory of the United States, over which all the general laws of Congress properly applicable to territories, and not in terms locally inapplicable, are in full force and effect. . . . It would appear that Porto Rico is in fact more of an organized territory than some of the older jurisdictions, because it has what no other territory, save Hawaii, has; that is, a separate court of the United States, presumably to enforce United States laws as a part of its jurisdiction, wholly distinct from the local insular courts, which form a complete and ample local system in themselves." Peck Steamship Line *v.* New York, etc., Steamship Co. (1906), 2 Porto Rico Fed. 109, 129. See to same effect Elkins *v.* People (1909), 5 Porto Rico Fed. 103, 111; 23 Op. Atty. Gen. U. S. 634; Municipality of Ponce *v.* Roman Catholic Church (1907), 210 U. S. 296, 52 L. Ed. 1068; American Ry. *v.* Didricksen (1913), 227 U. S. 145, 57 L. Ed. 456; Porto Rico *v.* Rosaly (1913), 227 U. S. 270, 273, 57 L. Ed. 507. But the Federal Court of Porto Rico, in a later case, after stating that "the position of Porto Rico has been gradually evolved by a series of decisions" and admitting that "it is true that the Supreme Court has on more than one occasion referred to Porto Rico as, for some purposes, a territory," continued: "These decisions, however, must be taken not as establishing any particular rule which was

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Passing from the territories we find Cuba a foreign country, a free and independent Republic with a written

not before the Court, but as limited to the facts of the particular case. Porto Rico, apart from its not being incorporated into the United States, and being, unlike technical territories, an island at a distance from the mainland of the United States, is not organized on the basis of the technical territories heretofore known." The conclusion then was that: "Upon the whole, Porto Rico is much more in the nature of a dependent state external to the United States, and corresponding to what are called possessions of the British Crown rather than to a technical territory of the United States." Fajardo Sugar Co. *v.* Richardson (1913), 6 Porto Rico Fed. 224.

"The organic act of 1913 provides that the government of the Island shall be vested in an executive, consisting of a governor and six heads of administrative departments, a legislature of two houses—the executive council, and a house of delegates—and a system of courts of justice, consisting of a territorial court having the jurisdiction of the United States Circuit and District Courts, and a Supreme Court of Porto Rico, with such inferior courts as the local legislature may from time to time create. The most characteristic feature of this government is the manner in which the members of the executive council, or upper house, are selected, and the powers given to that body. The law thus provides that the executive council shall be composed of eleven members, six of whom shall be the heads of the administrative departments, all, like the Governor, to be appointed by the President by and with the advice and consent of the Senate, for a term of four years. Not less than five of the eleven members must be native Porto Ricans. The members of the lower house, thirty-five in number, are selected every two years by what is practically manhood suffrage. The result of these provisions is to establish about as even a balance of power in the legislature between the Americans and the natives of the Island as can well be secured, though the veto power possessed by the Governor throws the final determination as to what legislation shall be enacted into American hands. . . . Throughout the year the executive council also sits in what is called executive session for the transaction of a large amount of important business. These duties were conferred upon it, partly by the organic act, and partly by laws enacted by the insular legislature. Among the most important of these duties are those of acting as a public utilities commission for the granting of all franchises and concessions of a

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constitution, but in effect a protectorate of the United States.[5] The Isle of Pines is also a "foreign country,"

public character, and of prescribing the rates and conditions of service that shall be observed by public service corporations; of administering the election laws; of acting as the approving body in respect to the sale of bonds by municipalities, or the granting of loans to these bodies from the insular treasury; of authorizing certain readjustments in the budget as enacted by the legislature; and of approving nominations to office made by the Governor. . . . Congress gave the government full power to take all action necessary for the management of the local affairs of the Island, subject only to the right of Congress to disapprove of legislation if it saw fit. It likewise relieved it from all administrative control from Washington further than is contained in the power of the President to remove persons appointed by him for cause, and in the obligation of the Governor and the heads of departments to make annual reports regarding the manner in which they have discharged their duties. . . . As regards representation in Congress, Porto Rico has been treated as a territory, its citizens being directed to elect every two years a commissioner or delegate who has a seat in the House of Representatives, with the right to be heard but not to vote." W. F. Willoughby, Cyc. of American Government, Vol. II, pp. 758-760. See further Rowe, The United States and Porto Rico; McKinley, Island Possessions of the United States, Chs. IV, V; Willoughby, Territories and Dependencies of the United States, Chs. IV, V; The Insular Cases (1901), 182 U. S. 1, 45 L. Ed. 1041.

[5] Elbert J. Benton, International Law and Diplomacy of the Spanish-American War, pp. 288-291; C. F. Randolph, 1 Columbia Law Review, p. 352; Colquhoun, Greater America, pp. 267, 268; McKinley, Island Possessions of the United States, Ch. III; Neely *v.* Henkel (1900), 180 U. S. 109, 45 L. Ed. 448; Goodyear Tire and Rubber Co. *v.* Rubber Tire Wheel Co. (1908), 164 Fed. 869. A provision, known as the Platt amendment, was inserted in the army appropriation bill of March 2, 1901, directing the President to leave the control of the Island to its people as soon as a government should be established under a constitution which defined the future relations with the United States substantially as follows:

"I. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization

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de facto under the jurisdiction of the Republic of Cuba.[6]

or for military or naval purposes or otherwise, lodgment in or control over any portion of said Island.

"II. That the said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the Island, after defraying the current expenses of the government shall be inadequate.

"III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

"IV. That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

"V. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the Island. . . .

"VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereof being left to future adjustment by treaty.

"VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States.

"VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

The Cuban constitutional convention adopted the Platt amendment, June 12, 1901, and added it as an appendix to the constitution. The treaty embodying the provisions of the Platt amendment was concluded May 22, 1903, and ratifications exchanged July 1, 1904. 31 Stat. at L. 897, 898; Foreign Relations, 1904, p. 243; John Halladay Latané, America as a World Power, pp. 179, 180, 181, 189.

[6] Pearcy *v.* Stranahan (1906), 205 U. S. 257, 51 L. Ed. 793.

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Samoa, Guam, and the Panama Canal Zone are held for special purposes. The portion of Samoa, principally the Island of Tutuila, assigned by treaty with Great Britain and Germany to the United States, is a naval station with all governmental powers in the hands of the commandant.[7] Guam similarly is under military government with the naval officer in command as chief executive in complete control.[8] The Panama Canal Zone

[7] Willoughby, Territories and Dependencies of the United States, pp. 290-302. The system of local government erected by Commander Tilley and his successors, has been based upon the family and tribal organizations already existing among the Samoans. Concerning his governmental policy Commander Tilley said: "I considered that the best way to govern these people was to let them, as far as possible, govern themselves, by continuing their good and time-honoured customs and gradually abolishing the bad ones. The Samoans are still in the patriarchal state; and the head of the household is supreme ruler of his own little family, and these chiefs in turn form a council which governs each village. Each town is practically independent of the others, though there is a parliament or 'fono' for every district. . . . I followed the plan which has proved so successful in Fiji of appointing native chiefs as local magistrates or governors in each district." McKinley, Island Possessions of the United States, pp. 269-276.

[8] Forbes-Lindsay, America's Insular Possessions, Vol. I, pp. 225, 226; McKinley, Island Possessions of the United States, pp. 276-279; Willoughby, Territories and Dependencies of the United States, pp. 302, 303. Ex. Or. of the President of Dec. 23, 1898, placing Guam under the control of the Department of the Navy and the "Instructions for the military commander of the Island of Guam" issued by the Secretary of the Navy on Jan. 12, 1899, are quoted in part in Duarte *v.* Dade (1915), XIII O. G. 2006. "For administrative purposes the Island is divided into four counties, each represented by a resident native commissioner appointed by the Governor. His powers are confined to police jurisdiction with authority to try, as Justice-of-the-Peace, a certain class of criminal cases of minor gravity. The more important cases are tried in the Island Court, also presided over by a native judge who sits in Agaña. Appeals lie to this Court from the Justices' Courts and, in certain cases, from the Island Court to the Court of Appeals of the Island. The Island Court is the same as

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is a specially organized government for the Panama Canal.[9]

existed under Spanish domination, under the title of Court of First Instance, and is similar in jurisdiction to the present courts of that name in the Philippines. The Court of Appeals, as at present constituted, is a creation of my own. Under the Spanish, appeals from the Court of First Instance in Guam lay to the *Audiencia* in Manila,—Guam then belonging to the political division of the *Filipinas*. With the entire independence of Guam under the United States, and in the absence of all regulation by law of Congress, the earlier American Governors constituted a Supreme Court to consist of the Governor himself. The time had come and the material was available to form a Court of natives, five in all with an Americanized Spaniard (living permanently in the Island and married to a native), as Chief Justice. This has now been in successful operation for about six years. . . . The Spanish law prevails, modified by the decrees, not numerous, of the several Governors. Congress has never legislated for Guam except to include in the appropriation bills certain items for the Naval Station. The President, in 1899, issued a short Executive Order covering the Customs Tariff for the Island and in 1901 another defining the accountability for insular funds. The last law regulating the tariff between the Philippine Islands and the United States included Guam. These are the only legal restraints emanating from the Government on the action of the Island administrator. Neither has the Navy Department issued special regulations to limit or control or advise his course. He is bound to observe the Naval Regulations but, as a matter of fact, he is the most independent official I know of and possesses, practically, the power of a benevolent despot over an absolutely helpless people. . . . In addition to the Judges the other native officials are the Island Attorney, who is also the Prosecuting Officer, Registrar of Lands, Deeds and Titles, and the Custodian of the Commercial Register; the Island Treasurer and assistants; the Clerk of the Courts; the Warden of the jail, who is also the County Commissioner of Agaña County. The Naval Surgeons are the Sanitary Inspectors. The Commissioner of Schools is an American, as is the Collector of Customs. The school-teachers are both Americans and natives of both sexes. The Island officials, and all public improvements not made for the efficiency of the Naval Station as such, are paid from the revenues of the Island." Address of Commodore George L. Dyer, before the Lake Mohonk Conference, Oct. 21, 1910, pp. 156, 157.

[9] The Panama Canal Zone was acquired from the Republic of

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The minor possessions of the United States, Wake Island, Midway Islands, Howland Island, Baker Island, and the Guano Islands, are practically uninhabited.

The foregoing impresses one with the variety of relationships within and to the United States—States; a district for the capital; incorporated, organized territories; an unincorporated, organized territory; a virtual protectorate; naval governments; a canal government; and no government at all. Large as is the list, the Philippines are included in no division.

§ 94. Whether the Philippines are a foreign country.—Mr. Chief Justice Marshall and Mr. Justice Story have defined a foreign country as one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States.[10] Applied in the Insular Cases [11] Porto Rico was held not to be a foreign country after the cession.

In the Diamond Rings case [12] an identical question arose relative to the Philippines. The United States Supreme Court found no distinction in this particular between the situation of Porto Rico and the Philippines. After the ratification of the treaty of peace, the Court

Panama by treaty of November 18, 1903, 33 Stat. at L. 2234. The title of the United States thereto was judicially sustained in the case of Wilson *v.* Shaw (1909), 204 U. S. 24, 51 L. Ed. 351. The Zone is now governed by Act of Congress of August 24, 1912. See Willoughby, Territories and Dependencies of the United States, pp. 303-306; Albert Bushnell Hart, Cyclopedia of American Government, Vol. I, pp. 218, 219.

[10] The Adventure (1812), I Brock, 235, Fed. Cas. No. 93; The Eliza (1813), 2 Gall. 4, Fed. Cas. No. 4,346; Taber *v.* U. S. (1839), 1 Story 1, Fed. Cas. No. 13,722; De Lima *v.* Bidwell (1901), 182 U. S. 1,180, 45 L. Ed. 1047.

[11] De Lima *v.* Bidwell, see sec. 85, *supra.*

[12] 183 U. S. 176, 46 L. Ed. 138 (1901). Followed in U. S. *v.* Heinszen & Co. (1906), 206 U. S. 370, 51 L. Ed. 1098, and in Faber *v.* U. S. (1911), 221 U. S. 649, 55 L. Ed. 897.

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said, the Philippines "ceased to be a foreign country." The Attorney-General of the United States later rendered an opinion to the same effect.[13]

The Philippine Islands are not a foreign country.

§ 95. Whether sovereign or semi-sovereign.—Although not a foreign country, we find the Government of the Philippine Islands exercising powers which, prior to the Spanish-American War, had vested either in foreign states or in the Federal government exclusively. To particularize, the government of the Philippine Islands levied a custom tariff on goods, wares, and merchandise coming from the United States into the Philippines; its own exports entering the United States were likewise taxed; it still has separate tariff and internal revenue laws; it issues its own currency; it has a distinct postage and controls its own postal service; it has extradition rights; it has entered into postal money order agreements and parcel post conventions with other governments.[14]

[13] ". . . The question is, whether the Philippine Islands are a 'foreign country' within the meaning of said Section 14. I am of the opinion that they are not. . . .

"That the territory ceded to the United States by the treaty with Spain is not 'foreign' territory, within the meaning of the tariff laws, was conclusively settled by the Supreme Court of the United States in De Lima *v.* Bidwell, 182 U. S. 1, 196. By the tariff act in force when the cession was made it was provided that 'there shall be levied, collected and paid upon all articles imported from foreign countries' certain duties therein specified. The question was whether certain cargoes of sugar shipped from Porto Rico were subject to duty; and the Court held, as expressed in the syllabus, that 'with the ratification of the treaty of peace between the United States and Spain, April 11, 1899, the Island of Porto Rico ceased to be a 'foreign country, within the meaning of the tariff laws.'" XXVIII Ops. 422. Also same holding in XXV Ops. 179.

[14] 4 Op. Atty. Gen. P. I., 205, 377; Adm. Code, sec. 1158. The power to negotiate and conclude money-order and parcel-post conventions or agreements with foreign governments, which shall cover

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Hon. Charles E. Magoon, in a scholarly address before the Patria Club of the city of New York, on February 19, 1904, speaking on the subject "What followed the Flag in the Philippines," said:

"No integral or segregated portion of the territory subject to the sovereignty of the United States is to-day exercising by itself and for itself so many of the powers of sovereignty as is the Philippine Archipelago. *It is well-nigh a sovereign nation,* lacking complete independence in that it is not at liberty to exercise its judgment and discretion in matters affecting its relations with foreign governments, and that its exercises of legislative authority are subject to the disapproval of Congress. It is accurate and exact to say that the people of the Philippines govern themselves, and that the only political right enjoyed by citizens of the states and denied to them is the right to participate in the government of the states of The Union." As since Judge Magoon made these remarks over twelve years have elapsed, crowded with one governmental change after another, all leading to absolute Filipino self-government, how much stronger would his statement be of present conditions.

the mail and money-order service between the Philippine Islands and such foreign governments, resides, not in Postmaster-General, but in the Government of the Philippine Islands. 29 Op. Atty. Gen. U. S. 380. It should be remembered, in this connection, that the Universal Postal Money Convention was between "the United States of America and the island possessions of the United States of America" and other countries. It has been held that under its present status the Government of the Philippine Islands has no treaty making powers. 5 Op. Atty. Gen. P. I. 326; and the exhaustive thesis to this effect of Juan L. Luna entitled "Treaty-Making Powers of the Government of the Philippine Islands under Its Present Status," submitted to the College of Law, University of the Philippines, for the degree of Bachelor of Laws. In accord U. S. *v.* Rauscher (1886), 119 U. S. 407, 30 L. Ed. 425; U. S. *v.* Arjona (1887), 120 U. S. 479, 30 L. Ed. 728; Butler, Treaty-Making Power of the United States, secs. 121, 133.

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An unbroken line of opinions in a similar vein showing the autonomous nature of the Philippine Government can be found.[15]

Are the Philippines sovereign?

Sovereignty may be said to be the union and exercise of all human power possessed in a state. Mr. John Austin, an eminent authority upon the science of jurisprudence, says:

"The superiority, which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other superiority, and from other society, by the following marks or characters:—

"1. The *bulk* of the given society are in a habit of obedience or submission to a *determinate* and *common* superior, let that common superior be a certain individual, person, or a certain body or aggregate of individual persons.

"2. That certain individual, or that certain body of individuals, is not in a habit of obedience to a determinate human superior." [16]

Some writers use sovereignty and independence as practically synonymous. International law, however, recognizes semi-sovereign states [17] maintaining international relations but not altogether independent, because

[15] See Arellano, C. J. in *In re* Patterson (1902), 1 Phil. 93; Johnson J. in Barcelon *v.* Baker (1905), 5 Phil. 87; Willard J. in Gaspar *v.* Molina (1905), 5 Phil. 197; Elliott J. in U. S. *v.* Bull (1910), 15 Phil. 7; Trent J. in Severino *v.* Governor-General (1910), 16 Phil. 366; Johnson J. in Forbes *v.* Chuco Tiaco (1910), 16 Phil. 534; Villamor, Attorney-General, opinion June 8, 1910, 5 Op. Atty. Gen. P. I. 511. And for Porto Rico, *In re* Neagle (1914), 21 Porto Rico, 339.

[16] Austin, The Province of Jurisprudence Determined, Vol. I, p. 170; Jameson, Constitutional Conventions, 4th Ed., p. 17. See further Story on the Constitution, 5th Ed., sec. 207; 36 Cyc. 516, citing cases.

[17] Revier, *Principes du Droit des Gens;* Calvo, *Le Droit Int;* 1 Moore, International Law Digest, pp. 18-20, 27.

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a paramount state called the suzerain can control its foreign affairs. Sovereignty assumes two aspects: External, as independent of all control from without; internal, as paramount over all action within.[18]

The United States as an independent state must be presumed to have retained sovereignty over all places subject to its jurisdiction. In fact, the United States Supreme Court has held that during the term of pupilage, territories and dependencies do not constitute a sovereign power.[19] The same Court, having in mind the title acquired by the Treaty of Paris, has further said that the Philippines "came under the complete and absolute sovereignty and dominion of the United States."[20] Again the Court said that "The jurisdiction and authority of the United States" over the Philippines "for all legitimate purposes of government, is paramount."[21] And Congress while granting autonomy to the Philippines in the Act of August 29, 1916, yet in the preamble to the law went out of its way to state that "the rights of sovereignty by the people of the United States" were not thereby impaired.

Such conclusions are reinforced when it is recalled that while the Philippine Government has a large and peculiar authority not possessed by any State or territory of the United States, nevertheless it lacks certain attributes of an independent State. It has not the right, for example,

[18] Holland's Jurisprudence 11th Ed., p. 50.

[19] Snow *v.* U. S. (1873), 18 Wall. 317, 21 L. Ed. 784. See also Talbot *v.* Silver Bow County Commissioners (1891), 139 U. S. 438, 35 L. Ed. 210; Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706.

[20] The Diamond Rings (1901), 183 U. S. 176, 179, 46 L. Ed. 138. To same effect, Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128; Rasmussen *v.* U. S. (1905) 197 U. S. 516, 49 L. Ed. 862; Cariño *v.* U. S. (1909), 212 U. S. 449, 53 L. Ed. 594; 38 Cyc. 196, citing cases.

[21] Grafton *v.* U. S. (1907), 206 U. S. 333, 354, 51 L. Ed. 1084, 11 Phil. 776, 798.

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to have an army and a navy, to declare war, or to enter into strictly international relations. "The only government of this country which other nations recognize or treat with is the government of the Union. . . ." [22] Even those functions which apparently bring the Islands close to sovereignty are regulated or permitted by American law. Thus the power which the government of the Philippine Islands has in respect to a local coinage is derived from an express act of Congress, which retains this exclusive prerogative of sovereignty.[23] The Philippines could only have such sovereign rights after it is made independent, since, at present, they are essential attributes of American sovereignty expressly delegated to the national government and enumerated in the Constitution. Always is there the transcendent power of Congress and the President of the United States, which, even when dormant, indicates a superior right to annul or modify any action of the local government or to withdraw any privilege once granted. "Mother-countries may concede to colonies (dependencies) the most complete autonomy of government, and reserve to themselves a control of so slight and negative a character as to make its exercise a rare occurrence; yet, so long as such control exists, the sovereignty of the mother-country is not released, and such colony is therefore to be considered as possessing no independent political powers." [24]

Testing the status of the Philippines by our definition of "state," we find this resultant proposition: The Philippine Islands is not a sovereign or semi-sovereign state, because, while it may be composed of a people perma-

[22] Fong Yue Ting *v.* U. S. (1893), 149 U. S. 698, 37 L. Ed. 905.
[23] Ling Su Fan *v.* U. S. (1910), 218 U. S. 302, 54 L. Ed. 1049. See also sec. 10, Philippine Autonomy Act.
[24] Willoughby, The American Constitutional System, p. 6. See to same effect Butler, Treaty-making Power of the United States, sec. 121 and notes.

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nently occupying a fixed territory bound together by common laws, habits, and customs into one body politic, yet it does not exercise through the medium of an organized government independent sovereignty and control over all persons and things within its boundaries and is not capable of making war and peace and of entering into international relations with the other communities of the world.[25] But as a proviso that the Philippine Islands has internal sovereignty and enjoys substantially all the powers possessed by a state of the American Union.[26]

§ 96. Whether a state or territory of the United States.—If not a foreign country and if not sovereign or semi-sovereign, are the Philippines a state or territory of the United States?

No argument is needed to show the negative of the question—the Islands are neither a state nor an organized, incorporated territory.[27] The Philippines, it is true, has the form of government of such a state or territory and possesses many of their attributes, but is not admitted to this relationship. Just as the Diamond Rings case running along parallel lines with one of the Insular Cases found the Philippines not to be a foreign country, so the Dorr case[28] equivalent to another Insular Case applied basic constitutional principles to the point of whether or

[25] I Moore, International Law Digest, p. 14; Phillimore, Int. Law, 3rd Ed., Vol. I, p. 81.

[26] Porto Rico *v.* Rosaly (1913), 227 U. S. 270, 57 L. Ed. 507; *In re* Neagle (1914), 21 Porto Rico 339.

[27] "The Philippine Islands is not a state." U. S. *v.* Bull (1910), 15 Phil. 7, 20. Nor an organized territory. 23 Op. Atty. Gen. U. S. 634. See also Chun Toy *v.* Insular Collector of Customs (1915), XIII O. G. 2206.

[28] 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706 (1904). The opinion of the Supreme Court of the Philippines in the same case (1903), 2 Phil. 269, is well reasoned and illuminating. See further *In re* Allen (1903), 2 Phil. 630.

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not the Philippines were incorporated into the United States.

The Dorr case presented the question whether, in the absence of a statute of Congress expressly conferring the right, the sixth amendment, concerning trial by jury, is a necessary incident of judicial procedure in the Philippine Islands and controlling on Congress, where demand for trial by that method has been made by the accused and denied by the courts established in the Islands. The opinion has special weight, for it was delivered by Mr. Justice Day who had been Secretary of State during the Spanish-American War and President of the American Peace Commission. He affirmed the right of the United States to acquire territory and the right of Congress to govern the acquired territory subject only "to such constitutional restrictions upon the powers of that body as are applicable to the situation." The court then concluded that Congress is not required "to enact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated."

The Supreme Court of the United States shortly thereafter elucidated the Dorr case still further in a case concerning the status of Alaska.[89] Mr. Justice White (the present Chief Justice) in the opinion said that in the Dorr Case "it was decided that, whilst by the treaty with Spain the Philippine Islands had come under the sovereignty of the United States and were subject to its control as a dependency or possession, those Islands had not been incorporated into the United States as a part thereof, and therefore Congress, in legislating concerning them, was subject only to the provisions of the

[89] Rasmussen *v.* U. S. (1905) 197 U. S. 516, 49 L. Ed. 862.

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Constitution applicable to territory occupying that relation. The power to acquire territory without incorporating it into the United States as an integral part thereof, . . . was sustained upon the reasoning expounded in the opinion of three, if not of four, of the judges who concurred in the judgment in Downes *v.* Bidwell, that reasoning being in effect adopted in the Dorr Case as the basis of the ruling there made." After quoting with approval from the opinion in the Dorr Case, the Court continued: "We are brought, then, to determine whether Alaska has been incorporated into the United States as a part thereof, or is simply held, as the Philippine Islands are held, under the sovereignty of the United States as a possession or dependency. Concerning the test to be applied to determine whether in a particular case acquired territory has been incorporated into and forms a part of the United States, we do not deem it necessary to review the general subject, again contenting ourselves by quoting a brief passage from the opinion in Dorr *v.* United States, summing up the reasons which controlled in determining that the Philippine Islands were not incorporated."

These conclusions are substantiated by facts previously learned: The treaty of peace did not engage to incorporate the Philippines or its inhabitants into the United States. Congress to whom the political status was left for determination did not extend the laws and Constitution of the United States to the Islands.

Possibly we should have before stated that in a general sense the Philippine Islands is a territory. But recently (October 28, 1915) Attorney-General Gregory, reviewing the question, felt constrained to reverse an opinion of Attorney-General Knox [29a] and to hold that "While, like Porto Rico, the Philippine Islands are not in-

[29a] 24 Op. Atty. Gen. U. S. 549.

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corporated in the United States, they clearly are territory of the United States, and to the extent that Congress has assumed to legislate for them, they have been granted a form of territorial government and to this extent are a territory." Although in the opinion no distinction is drawn between an "Organized" or "Unorganized," "Incorporated" or "Unincorporated" Territory, it can be inferred therefrom that the Philippine Islands should constitutionally be considered to be an unincorporated territory.

The Philippine Islands have not been incorporated into the United States as a part thereof; i. e., are not a State or an organized, incorporated territory. The Philippines are an unincorporated territory.

§ 97. Whether a colony, dependency, or possession.—If not a foreign country, if not sovereign or semi-sovereign, and if not a State or an organized, incorporated territory, are the Philippines a colony, dependency, or possession of the United States?

The terms "colony," "dependency," and "possession" can be distinguished. A colony is a dependent political community settled or prospectively to be settled to a considerable degree by the citizens of its dominant state.[30] A dependency is a territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe.[31] A possession is much the same as a dependency, unless it be that possession implies title by conquest. A colony differs from a dependency or a possession because settled by

[30] Keller, Colonization, pp. 1, 2; Law Dictionaries; U. S. *v.* The Nancy (1814), 3 Wash. 281, 286, 27 Fed Cas. No. 15,854.

[31] Law Dictionaries; U. S. *v.* The Nancy, *Id.* Holt, Introduction to the Study of Government, Ch. X, gives two types of Dependencies, Colonial and Direct.

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citizens of the parent state, while a dependency or possession is mainly inhabited by people foreign in blood and habits.

Washington, Circuit Justice, explains the phrases as follows:

"The second position which arises out of the view before taken, of the different acts of congress on this subject, is, that the non-importation law of March 1, 1809, which interdicted commerce with the *possessions,* as well as with the *colonies and dependencies* of Great Britain, was revived only against that nation, her colonies, and dependencies; and this conducts us to the third and most difficult question in the cause. Is Malta to be considered as a dependency of Great Britain? In deciding this question, the court has not had an opportunity to derive much information from books. The precise meaning of the word *'dependency',* as it is used by congress, in the law under consideration, cannot be ascertained with any degree of certainty. It may, however, be safely concluded, that it imports some civil and political relation, which one country bears to another, as its superior, *different from that of a mere possession.* The introduction of the words 'actual possession', into the act of March 1, 1809, and the omission of them in that of May 1, 1810, afford strong evidence, that congress did not consider a dependency, as synonymous with a possession; but, on the contrary, the difference was so material, as to induce congress to sanction a trade with the former, which had been previously interdicted with both. As soon as this distinction is established, the mind of a legal man is irresistibly led to annex to the one, the idea of possession, accompanied by title, in opposition to a mere naked possession, obtained either by force, and against right, or rightfully acquired, and wrongfully withheld from the legal sovereign; and this, the court is strongly inclined to think, is *the true*

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definition of a dependency;—that is, a territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. It is not a colony, because it is not settled by the citizens of the sovereign, or mother state; but it is lawfully acquired or held, and the people are as much subjects of the state which has thus obtained it, as if they had been born in the principal state, and had emigrated to the dependent territory. The usual ways by which such acquisitions are made, are by purchase, or by conquest in war. The first, being made with the consent of the sovereign, is permanent and indefeasible; but the latter is subject to uncertainty, and liable to restoration to the sovereign, from whom it was taken, unless confirmed by a treaty of peace, or unless it be voluntarily relinquished by such sovereign. When so confirmed, or relinquished, and not before, it seems to be, in the true sense of the word, a dependency; that is, it is durably incorporated into the dominions of the conqueror, and becomes a part of his territory, as to government and national right." [32]

The President, the Congress, and the United States Supreme Court have never spoken of Porto Rico and the Philippine Islands as colonies. They can not be properly so designated. The Courts especially have always described the Philippines as a dependency or possession.[33]

[32] U. S. *v.* The Nancy (1814), 3 Wash. 281, 286, 27 Fed. Cas. No. 15,854.

[33] See Downes *v.* Bidwell (1901), 182 U. S. 244, 45 L. Ed. 1088; Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706; Rasmussen *v.* U. S. (1905) 197 U. S. 516, 49 L. Ed. 862; Gardiner, Our Right to Acquire and Hold Foreign Territory, p. 20. "United States and its possessions," as used in the U. S. Tariff laws, construed in Uy Chaco *v.* Collector of Customs (1913), 24 Phil. 548. "Possession" or "Insular Possession" used in a number of Acts of

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§ 98. Whether part of the United States in an international sense.—If not a foreign country, if not sovereign or semi-sovereign, if not a State or an organized, incorporated territory, and if not a colony, are the Philippines a part of the United States in an international sense?

The term "United States" [34] has two meanings. It is first, strictly speaking, but the union of the separate States under a common constitution.[35] On the other hand, it has a broad signification in dealing with foreign sovereignties and then includes all territory subject to the jurisdiction of the Federal Government. Mr. Chief Justice Marshall said that "It is the name given to our great republic which is composed of States and territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania." [36]

Statutes of Congress have construed the phrase "United States" to embrace all waters, territory or other places subject to the jurisdiction thereof. A late case [37] has held the Philippines to be a part of the United States within the meaning of a commercial convention with

Congress, *e. g.*, Act of June 13, 1906, sec. 12; Act, Feb. 20, 1907; U. S. Passport Rule of Sept. 12, 1903, etc.

[34] See generally C. C. Langdell, The Status of Our New Territories, XII Harvard Law Review (1899), p. 365; 5 Op. Atty. Gen. P. I. 622.

[35] Texas *v.* White (1869), 10 Wall. 700, 19 L. Ed. 227.

[36] Loughborough *v.* Blake (1820), 5 Wheat. 317, 319, 5 L. Ed. 98; De Geofrey *v.* Riggs (1890), 133 U. S. 258, 33 L. Ed. 642; Downes *v.* Bidwell (1901), 182 U. S. 1, 262, 45 L. Ed. 1088. Mr. Butler sums up the difference in a single, well-balanced sentence—"As to state matters and internal affairs, the United States *are* a federation, as to general matters affecting foreign affairs or territory held in common, the United States *is* a nation." Treaty-Making Power of the United States, Vol. I, pp. 27, 28.

[37] Faber *v.* U. S. (1911), 221 U. S. 649, 55 L. Ed. 897.

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Cuba. The Magistrate's decision in the Sotto case at Hongkong, August 16, 1913, looked upon the Philippines as a constituent part of the United States. The idea of American sovereignty would necessarily refute any view, relative to relations with foreign governments, which permitted a disregard of paramount American authority, as unsafe and undignified.

The Philippines are a part of the United States in an international sense.[38]

§ 99. The case of United States versus Bull.—In the case of United States *v.* Bull [39] the Supreme Court of the Philippine Islands, considering "the importance of the question" presented, "after much discussion and considerable diversity of opinion," established "certain applicable constitutional doctrines." In reality the opinion by Mr. Justice Elliott constitutes a veritable text book in the most approved style on certain subjects of Philippine Government. Therein, after enunciating fundamental, constitutional conceptions, tracing the history of the government, and analyzing its functions, it was said of the status of the Philippines:

"This Government of the Philippine Islands is not a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. The authority for its creation and *maintenance* is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not directly on the Philippine Government. It is the creation of the United States, acting through the President and Congress, both deriving power from the same source, but from different parts thereof. For its powers and the limitations thereon the Govern-

[38] See C. F. Randolph, Law and Policy of Annexation, pp. 12, 13.
[39] 15 Phil. 7 (1910).

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ment of the Philippines looked to the orders of the President before Congress acted and the Acts of Congress after it assumed control. Its organic laws are derived from the formally and legally expressed will of the President and Congress, instead of the popular sovereign constituency which lies back of American constitutions. The power to legislate upon any subject relating to the Philippines is primarily in Congress, and when it exercises such power its act is from the viewpoint of the Philippines the legal equivalent of an amendment of a constitution in the United States.

"Within the limits of its authority the Government of the Philippines is a complete governmental organism with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments."

While this opinion went to the extreme in a judicial endeavor to sanction legislative authority and to set up a *quasi*-sovereign government, it was not appealed to the United States Supreme Court and is controlling.[40] The same result was attained in two later decisions affecting the executive power.[41]

§ 100. Whether legally organized.—The Government of the Philippine Islands rests on a valid title under international law passed by Spain to the United States, and a constitutional foundation of right of acquisition and government. The United States had the right to acquire the Philippines by treaty. The President had the right to institute military rule merging into *quasi*-civil administration.[42] Congress had the right to confirm Presidential action, to organize a temporary government, and

[40] But compare with *In re* Guariña (1913), 24 Phil. 37. See sec. 80 *supra*, note 7, p. 279.

[41] Severino *v.* Governor-General (1910), 16 Phil. 366 and Forbes *v.* Chuco Tiaco (1910), 16 Phil. 534.

[42] Duarte *v.* Dade (1915), XIII O. G. 2006.

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later, to create a local organization, and to delegate legislative authority to such agencies as it selected.

In a case where the legal constitution of the courts of the Islands was challenged, Mr. Justice Moreland said—"That the government here in these Islands . . . has been legally and properly constituted by Congress we do not doubt." [43]

§ 101. Whether Filipinos are aliens, subjects, or citizens.—In addition to ascertaining the status of the Philippines as an entity, it is well to note the status of the Filipino as an individual.

Are the Filipinos aliens? An early opinion of the Acting Attorney-General of the United States loosely mentions them as such.[44] But all later opinions of the Attorney-General of the United States and of the Attorney-General of the Philippines have held the inhabitants of the Philippines not to be aliens.[45] This must be so, if the provisions of the Treaty of Paris transferring the sovereignty of Spain over the Islands and their people to the United States, and if the decisions of the Supreme

[43] U. S. *v.* Beecham (1910), 16 Phil, 272, 299, citing cases. See also the Insular Cases; Binns *v.* U. S. (1904), 194 U. S. 486, 48 L. Ed. 1087; Dorr *v.* U. S. (1904), 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706; U. S. *v.* Heinszen & Co. (1907), 206 U. S. 370, 51 L. Ed. 1098.

[44] 22 Op. Atty. Gen. U. S. 495, May 29, 1899.

[45] See Op. Atty. Gen. P. I., April 1, 1912, holding that "the United States Contract Labor Law deals with aliens; Filipinos are not aliens; the Act of Congress of February 20, 1907, concerns 'the greater United States'; the Philippine Islands are included therein. In my opinion, therefore, the taking of Filipinos from these Islands to San Francisco to be used as laborers in connection with the Philippines exhibit at the Panama-Pacific International Exposition would not violate any provision of the United States Contract Labor Law." And 25 Op. Atty. Gen. U. S. 131, where Attorney-General Knox held that citizens of the Philippine Islands coming from foreign parts are not required to pay the head-tax prescribed by section 1 of the Act of March 3, 1903.

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Court of the United States to the effect that Porto Rico and the Philippines are not foreign countries but are parts of the United States in an international sense, are to be given effect. The native inhabitants' relations with their former sovereign were dissolved by cession. They ceased to be Spanish subjects. The allegiance of the Filipinos became due to the United States.[46]

The Chief Justice in a leading case concerning the question of whether a Porto Rican was an alien within the meaning of the Contract Labor Law of 1891, said:

"We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicil was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States,—are not 'aliens,' and upon their arrival by water at the ports of our mainland are not 'alien immigrants,' within the intent and meaning of the act of 1891." [47]

Are the Filipinos citizens of the United States? The term "citizen" has different meanings in municipal and international law. Without venturing into fine distinctions, let us take its strict definition under American law, to be a member of the sovereign people entitled to full civil and political rights.[48] Citizenship originates

[46] American Insular Co. *v.* Canter (1828), 1 Pet. 511, 7 L. Ed. 242, generally; Gonzalez *v.* Williams (1904), 192 U. S. 1, 48 L. Ed. 317, as to Porto Ricans; the Diamond Rings (1901), 183 U. S. 176, 46 L. Ed. 138, as to Filipinos.

[47] Gonzalez *v.* Williams (1904), 192 U. S. 1, 48 L. Ed. 317. See also American Ry. Co. *v.* Didricksen (1913), 227 U. S. 145, 57 L. Ed. 456; Roa *v.* Collector of Customs (1912), 23 Phil. 315, 336.

[48] See U. S. *v.* Cruickshank (1876) 92 U. S. 542, 23 L. Ed. 588.

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not with man but with the government. In the United States it can only be acquired by birth or naturalization.

We find no such collective naturalization [49] accomplished for the Filipinos as was granted to the inhabitants of ceded territory previous to the Spanish War by treaty, political incorporation, and extension of the Constitution. Article IX of the Treaty of Paris left the civil rights and political status of the native inhabitants to be determined by Congress. This, said the United States Supreme Court, "is an implied denial of the rights of the inhabitants (of Porto Rico and the Philippines) to American citizenship until Congress by further action shall signify its assent thereto." [50] And Congress in the Philippine Bill [51] did not confer Federal citizenship but declared them to be "citizens of the Philippine Islands." The Filipinos could not fulfill the requirements of the fourteenth amendment to the Constitution defining citizen of the United States, for, while they are subject to the jurisdiction of the United States, they are not necessarily "persons born or naturalized in the United States." [52] Provision has been made for the Filipinos to become citizens by complying with the provisions of section 30 of

[49] See Fuller, C. J., in Boyd *v.* Thayer (1892), 143 U. S. 135, 36 L. Ed. 103; III Moore, International Law Digest, pp. 311-318. Whether a treaty could constitutionally add to the members of the Union has never been decided by the courts. In the debate on the Louisiana purchase, it was contended that the Constitution did not vest such power in the President and the Senate. Annals of Congress, 1803, pp. 432 *et seq.;* Magoon's Reports, pp. 123 *et seq.* Whether birth in the Philippines *after* the treaty makes one a citizen is also unsettled.

[50] White J. in Downes *v.* Bidwell (1901), 182 U. S. at p. 280, 45 L. Ed. 1103.

[51] Act of Congress, July 1, 1902, sec. 4, and Act of Congress, March 23, 1912. Executive Order No. 32, series of 1904, by the Governor-General relating to passports makes the same distinction.

[52] Read U. S. *v.* Wong Kim Ark (1898), 169 U. S. 649, 42 L. Ed. 890.

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the Naturalization Law of June 29, 1906, thus proving that before doing so they are not considered to be citizens.

With this definition of citizenship and these fundamental conceptions in mind, one is not surprised to find all authorities holding that the inhabitants of Porto Rico and the Philippines are not citizens of the United States.[53]

Are the Filipinos subjects of the United States? The word "subject" was discarded upon the separation of the states from Great Britain as not suited to one living under a republican form of government.[54] It describes a servile relationship which is not true of actual conditions.

If not an alien, if not a citizen of the United States, and if not a subject of the United States, the Filipino

[53] Attorney-General Griggs says that "the undisputed attitude of the executive and legislative departments of the Government has been and is that the native inhabitants of Porto Rico and the Philippine Islands did not become citizens of the United States by virtue of the cession of the Islands by Spain by means of the Treaty of Paris." 23 Op. Atty. Gen. U. S. 370. Also 23 Op. Atty. Gen. U. S. 400; 25 Op. Atty. Gen. U. S. 179; 3 Op. Atty. Gen. P. I. 292; 5 Op. Atty. Gen. P. I. 144; Magoon's Reports, pp. 60, 61; Mr. Hay, Secretary of State, III Moore, Int. Law Digest, pp. 316-318; Tan Te *v.* Bell (1914), 27 Phil. 354.

[54] Waite, C. J., in Minor *v.* Happersett (1875), 21 Wall. 162, 165, 166, 22 L. Ed. 627; White *v.* Clements (1896), 39 Ga. 232. "In one sense, the term sovereign has for its correlative, subject. In this sense, the term can receive no application; for it has no object in the Constitution of the United States. Under that Constitution there are citizens, but no subjects. 'Citizens of the United States.' 'Citizens of another state.' 'Citizens of different states.' 'A state or citizen thereof.' The term, subject, occurs, indeed, once in the instrument; but to mark the contrast strongly, the epithet 'foreign' is prefixed." Chisholm *v.* Ga. (1793), 2 Dall. 419, 456, 1 L. Ed. 440. But Arellano, C. J., in *In re* Bosque (1902), 1 Phil. 88 (possibly because of the then uncertain status) and Rule 38 of the U. S. Chinese Regulations of February 5, 1906, make use of the word "subject."

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would seem to be a man without status. Not so. Beginning anew, "citizen" in international law may have a broad significance.[55] In the course of an elaborate opinion for the American minister resident in Siam, Attorney-General Araneta explains this idea as follows:

"It logically follows from what has been said, that if by 'citizen' we mean 'a member of the civil state, entitled to all its privileges,' the inhabitants of the Philippine Islands are not citizens of the United States, for even in the treaty it is provided that 'the civil rights and political status . . . shall be determined by the Congress' (Art. IX), and Congress has, in conformity with this provision, expressly declared them to be citizens of the Philippine Islands. Nor do they fulfill the requirements of the fourteenth amendment to the Constitution, for while they are subject to the jurisdiction of the United States they are not 'persons born or naturalized in the United States.'

"If by 'citizen' is meant one who owes allegiance to the United States in return for the protection which that Government affords him, then the inhabitants of these Islands are citizens of the United States. That they are entitled to call upon the United States to protect them in their rights of property and person, preserve the public peace, maintain law and order, and prevent encroachments upon the territory by foreign nations can not be denied. Correlatively, the inhabitants owe allegiance to the sovereignty and obedience to the laws whereby the sovereignty undertakes to discharge the obligation.

"While it is clear, therefore, that the inhabitants of these Islands are not citizens of the United States in respect to the rights, privileges, and immunities guaranteed by the Constitution to the citizens of the several states of

[55] Waite, C. J., in Minor *v.* Happersett, *Id.*; Fuller, C. J., in Boyd *v.* Thayer (1892), 143 U. S. 135, 36 L. Ed. 103.

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the American Union, it is also equally clear that they are citizens of the United States in an international sense, and as such are entitled as of right to the protection of the United States in their rights of property and person, whether at home or in foreign lands." [56]

Congress has legislatively classified the inhabitants of Porto Rico and the Philippines as "persons not citizens" but who "owe permanent allegiance to the United States." [57] To avoid needless confusion, Frederick R. Coudert, John Basset Moore and others have suggested the comprehensive word "national," to designate the status of one not an alien and yet not a full citizen—a position somewhat akin to the common law principle of English nationality—birth within the allegiance of the King. The distinction then becomes one between aliens and nationals, the latter including citizens. Mr. Coudert says: "National would include all persons owing allegiance to the United States and exclude all persons owing

[56] 3 Op. Atty. Gen. P. I. 292, 295, citing at length Van Dyne, Citizenship of the United States, pp. 229, 230. For purposes of suit it "has been the uniform practice" of the Federal Court for Porto Rico, to consider a citizen of Porto Rico as a citizen of the United States. See Gonzalez *v.* Izaguirre (1913), 6 Porto Rico Fed. 222. "The inhabitants of Porto Rico and the Philippine Islands, other than those who were subjects of Spain at the date of the treaty of peace of December 10, 1898, and who elected to retain their allegiance of nativity, obtained the *international* status of citizens of the United States in the operation of that instrument. They did not become citizens of the United States, however, within the meaning of the Constitution, and, until their status in that regard has been established by Congress, they will continue to occupy the anomalous condition of citizens of Porto Rico and the Philippine Islands." Davis, Elements of International Law, 3d Ed., p. 141. An opinion of the Attorney-General of the United States has held a native Porto Rican to be "an American." 24 Op. Atty. Gen. U. S. 40. John S. Wise, Citizenship, Ch. I, would denominate the situation of such persons as "qualified citizenship."

[57] Act of Congress, June 29, 1906, sec. 30.

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allegiance to any other power. It is the co-relative of alien, and the two together are universally inclusive. A national is one who owes allegiance to any State, whatever its form of government. All citizens must be nationals, but all nationals may not be citizens." [58]

As bearing out such a thesis, two things are certain—the Filipinos owe allegiance [59] to the United States; the Filipinos are entitled to the same protection [60] as citizens of the United States. "Allegiance and protection are, in this connection, reciprocal obligations. The one is compensation for the other—allegiance for protection and protection for allegiance." [61] The United States can demand obedience to such laws as are enacted for the Philippines. She could ask for the aid of Filipinos in case of need. Reciprocally, the inhabitants of the Philippines are entitled to protection from the United States in their rights of property and person, for the preservation of the public peace, for the maintenance of law and order, and for the prevention of encroachment upon the

[58] Coudert, Certainty and Justice, p. 136. Same author, Our New Peoples: Citizens, Subjects, Nationals, or Aliens, III Columbia Law Review, Jan., 1903, p. 131. See also MacClintock, Aliens under the Federal Laws of the United States, III Ill. Law Review, March, 1909, p. 493; and Moore, Int. L. Dig. sec. 372. "The general terms 'alien,' 'citizen,' 'subject,' are not absolutely inclusive, or completely comprehensive." Gonzalez *v.* Williams (1904), 192 U. S. 1, 48 L. Ed. 317.

[59] The Supreme Court of the Philippines makes this distinction in allegiance: "The Philippine Islands is and has been since the passage of said Act (July 1, 1902) completely under the control of the Congress of the United States and all the inhabitants owe complete and full allegiance or a qualified temporary allegiance, as the case may be, to the United States." Roa *v.* Collector of Customs (1912), 23 Phil. 315, 317.

[60] Mr. Hay, Sec. of State, III Moore, Int. L. Dig., pp. 316, 317; Mr. Hill, Acting Sec. of State, *Id.*; Gonzalez *v.* Williams, *Id.*

[61] Waite, C. J., in Minor *v.* Happersett (1875), 21 Wall. 162, 165, 22 L. Ed. 627.

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territory by foreign nations;[62] passports are issued to them;[63] and when residing abroad, they can call upon American consuls and diplomatic representatives for assistance and can receive the benefits of treaties between the United States and foreign countries. The amnesty proclamation expressly recognizes the obligation of allegiance to the United States. The Philippine Bill expressly confirmed the corresponding right to the protection of the United States. And the United States Supreme Court solemnly stated that "their (the native inhabitants) allegiance became due to the United States, and they became entitled to its protection."[64]

The Filipinos are not aliens, or subjects, or citizens of the United States. They are citizens of the Philippine Islands. They are also American nationals owing allegiance to the United States and entitled to its protection.

§ 102. Status stated.—The subject is one not free from doubt. Some comprehend its complexities. Still fewer undertake its solution. But the previous discussion should leave us in a position to determine exactly the present status of the Philippine Islands and their inhabitants.

[62] Magoon's Reports, p. 61.

[63] The Revised Statutes of the United States, sec. 4,076, prohibits the granting or verification of passports to and for any person other than citizens of the United States. The Act of June 14, 1902, amended this section so as to make it read: "No passports shall be granted or issued to or verified for any persons than those owing allegiance, whether citizens or not, to the United States." See 5 Op. Atty. Gen. P. I. 144. Paragraph 9 of Executive Order No. 32, series of 1904, reads: "In addition to the statements required by rule three, he (a Filipino) must state that he owes allegiance to the United States and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence, and loyalty."

[64] The Diamond Rings (1901), 183 U. S. 176, 46 L. Ed. 138.

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From a negative standpoint the Philippines occupy a relation to the United States different from that of other non-contiguous territory; not a foreign country; not sovereign or semi-sovereign; not a state or an organized, incorporated territory; not a part of the United States in a domestic sense; not under the Constitution, except as it operates on the President and Congress; and not a colony. The Filipinos are neither aliens, subjects, nor citizens of the United States.

THE PHILIPPINES ARE A DEPENDENCY—AN UNINCORPORATED TERRITORY—BELONGING TO THE UNITED STATES AND UNDER ITS COMPLETE SOVEREIGNTY—A PART OF THE UNITED STATES IN AN INTERNATIONAL SENSE. Officially, the Philippines are usually spoken of as an insular possession. From another view the Philippines are a complete governmental organism with the form and organization of a state or territory. It is the legal creation and agent of Congress, which, for administrative purposes, has placed the Philippine Government under the supervision of the President, making it a branch of the War Department.

THE FILIPINOS ARE CITIZENS OF THE PHILIPPINE ISLANDS AND AMERICAN NATIONALS OWING ALLEGIANCE TO THE UNITED STATES AND UNDER THE PROTECTION OF THE UNITED STATES.

If these statements were put in parallel columns, the anomalous status of the Philippine Islands and its people would be graphically portrayed. As one keen observer has said, the Government of the Philippine Islands is a government foreign to the United States for domestic purposes, but domestic for foreign purposes—a position midway between that of being foreign territory absolutely and domestic territory absolutely.

The status of the Philippines, moreover, is temporary

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and changing—present autonomy leading to future complete independence.[65]

[65] Act of Congress of July 1, 1902, the Philippine Bill, is entitled "An Act *temporarily* to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes." Act of Congress of August 29, 1916, the Philippine Autonomy Act is entitled: "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."

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CHAPTER 8.

ORGANIC LAW.[1]

§ 103. Terminology.
104. The United States Constitution in the Philippines.
105. Treaties of the United States.
106. Laws of express extension.
107. Acts of the Philippine Commission.
108. Laws of inherent force.
109. Resultant rules.
110. The Philippine bill.
111. The Philippine autonomy act.
112. Other organic laws.
113. The Philippine Constitution.

§ 103. Terminology.—"Organic Law" is the fundamental law or Constitution of a State, written or unwritten; that law or system of laws which defines and establishes the organization of government.[1a] It is a term usually applied to constitutional law only. For the United States, the Organic Law would be the United States Constitution; for a State of the Union, the United States Constitution and the State Constitution.

When a territory, organized or unorganized, is considered, we find Congress enacting what is known as an "Organic Act" conferring the powers of government.[2]

[1] Originally appeared in I Southern Law Quarterly, July, 1916, p. 209.

[1a] St. Louis *v.* Dorr (1898) 145 Mo. 466, 478, 42 L. R. A. 686, 68 Am. St. Rep. 575; Black's Law Dictionary, p. 860.

[2] *In re* Lane (1890) 135 U. S. 443, 447, 34 L. Ed. 219; Snow *v.* U. S. (1873) 85 U. S. 317, 21 L. Ed. 784; U. S. *v.* Ensign (1876) 2 Mont. 396, 400; U. S. *v.* Bull (1910) 15 Phil. 7, 21.

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"The Organic Law (or Act) of a territory takes the place of a Constitution as the fundamental law of the local government." [3] The Philippine Bill, formerly, and the Philippine Autonomy Act, even more so now, are for the Philippines the nearest approach to an Organic Act. The Supreme Court of the Philippines, speaking through Mr. Justice Carson, has said that "The various Acts of Congress conferring power upon the Philippine Legislature, and defining, prescribing and limiting this power, especially the Act of Congress of July 1, 1902, are to that Legislature in the nature of an organic act with its amendments, binding on it in like manner as is the Constitution of the United States upon Congress itself." [4]

To ascertain what the Organic Law of the Philippines is, it is necessary to begin with the supreme law of the sovereign, the United States Constitution, and then to consider the treaties between the United States and foreign countries, and the orders of the President and the resolutions and Acts of Congress having force in the Philippines.

§ 104. The United States Constitution in the Philippines.—We have hitherto seen statements without number to the effect that the Constitution does not operate of its own force within the Philippines. We have further noticed a formal negative prohibition by Congress inhibiting extension. In the face of such authority, it is with some temerity that we are constrained to inquire if, nevertheless, there are not some provisions of the Federal Constitution which are of universal application, no matter whether to a State, Territory, or dependency.

The Court of First Instance of the city of Manila by

[3] National Bank *v.* County of Yankton (1880) 101 U. S. 129, 133, 25 L. Ed. 1046.

[4] *In re* Guariña (1913) 24 Phil. 37, 45. See also Conchada *v.* Director of Prisons (1915) XIII O. G. 1478.

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Lobingier J.[5] in rendering decision in the case of Tan Te *v.* Bell,[6] discussed in a succeeding section, said:

"The truth is that the Federal Constitution contains two general classes of provisions:

"(1) *Those of universal application,* such as the prohibition of legislation 'respecting an establishment of religion or the free exercise thereof,' the prohibition of 'slavery or involuntary servitude,' etc. These operate to restrict the power of Congress in any part of what Chief Justice Marshall called 'The American Empire.' *To no part of it do they need extension; they are there ex propio vigore and ex vi termini.*

"(2) *Those of limited and local application,* such as the requirement that 'no *state* shall pass any *ex post facto* law or law impairing the obligation of contracts,' etc. Obviously this does not apply to Congress or even to a territorial legislature."

As an example of this view, take the Thirteenth Amendment mentioned by Judge Lobingier. It reads:

"Sec. 1. *Neither slavery nor involuntary servitude,* except as a punishment for crime whereof the party shall have been duly convicted, *shall exist within the United States, or any place subject to their jurisdiction.*

"Sec. 2. Congress shall have power to enforce this article by appropriate legislation."

Congress enacted appropriate legislation, containing the phrase "the United States or any place subject to the jurisdiction thereof," to enforce this Amendment.[7] The pur-

[5] Author of the article on "Constitutional Law" in the American and English Encyclopedia of Law and of "Territories" in Cyc.

[6] 27 Phil. 354 (1914). See sec. 108 *infra.*

[7] Sections 269 and 271 of the United States Criminal Code, in effect after January 1, 1910, and containing substantially the provisions of the Act of Congress of March 2, 1867, later enacted as sections 1990 and 5526, of the Revised Statutes of the United States, are quoted at the head of sec. 141 *infra.*

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pose was to abolish and prohibit slavery, involuntary servitude, and peonage.[8] As to the effect of the Amendment, it was said by the United States Supreme Court that this was a "grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this Government."[9] Again more at length in a later case,[10] the Court said:

"While the inciting cause of the Amendment was the emancipation of the colored race, yet it is not an attempt to commit that race to the care of the Nation. *It is the denunciation of a condition and not a declaration in favor of a particular people. It reaches every race and every individual, and if in any respect it commits one race to the Nation it commits every race and every individual thereof.* Slavery or involuntary servitude of the Chinese, of the Italian, of the Anglo-Saxon are as much within its compass as slavery or involuntary servitude of the African. . . . But, if as we have seen, that denounces a condition possible for all races and all individuals, then *a like wrong perpetrated* by white men upon a Chinese, or by black men upon a white man, or *by any man upon any man on account of his race,* should come within the jurisdiction of Congress, and that protection of individual rights which prior to the Thirteenth Amendment was unquestionably within the jurisdiction solely of the States, would by virtue of that Amendment be transferred to the Nation, and subject to the legislation of Congress."

That the Thirteenth Amendment is of application in the unincorporated as well as in the incorporated Territories, Professor Willoughby says "is clear."[11]

[8] U. S. *v.* Eberhart (1899) 127 Fed. 252; Slaughter House Cases (1873) 16 Wall. 36, 69, 72, 21 L. Ed. 394; Hodges *v.* U. S. (1906) 203 U. S. 1, 16, 51 L. Ed. 65.

[9] Slaughter House Cases, *Id.*

[10] Hodges *v.* U. S., *Id.*

[11] Willoughby on the Constitution, Vol. I, p. 442.

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The operation of the Act of Congress enforcing the Amendment was discussed in another case.[12] Said the Court:

"It is not open to doubt that Congress may enforce the Thirteenth Amendment by direct legislation, punishing the holding of a person in slavery or in involuntary servitude except as a punishment for crime. In the exercise of that power Congress has enacted these sections denouncing peonage, and punishing one who holds another in that condition of involuntary servitude. *This legislation is not limited to the territories or other parts of the strictly National domain, but is operative in the States and wherever the sovereignty of the United States extends.* We entertain no doubt of the validity of this legislation, or of its applicability to the case of any person holding another in a state of peonage, and this whether there be municipal ordinance or state law sanctioning such holding. It operated directly on every citizen of the Republic, wherever his residence may be."

Is it not possible that some provisions of the United States Constitution do have universal application—do have force in the Philippines? For example, is not the Philippines a "place" subject to the "jurisdiction of the United States?" Are not the inhabitants of the Philippines a part of "the human race within the jurisdiction" of the government of the United States—a "race" and "individuals" protected by the Thirteenth Amendment and suppletory Congressional legislation? Do not this Amendment and this Act operate "wherever the sovereignty of the United States extends"—to the Philippines? The author is bold enough to so suggest, although since Congress has enacted a similar clause in the Philippine Bill of Rights the question is more theoretical than practical in nature.

[12] Clyatt *v.* U. S. (1905) 197 U. S. 207, 218, 49 L. Ed. 726.

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§ 105. Treaties of the United States.—The Treaty of Paris, with its supplemental protocol of agreement extending the period for the declaration of Spanish nationality and the additional treaty for the cession of certain small islands, because of their direct bearing on the Philippines, can be considered as a part of the supreme law of the Islands.[13] The courts have deemed the provisions of the Treaty of Paris controlling in a number of cases. The Universal Postal Convention also gains such rank, because of its express inclusion of the island possessions of the United States and because of the interpretation placed upon the Convention by the Attorneys General of the Philippines and the United States. The treaties between the United States and China possess importance because of their bearing on the Chinese Exclusion Law. These are but examples for probably all treaties of the United States with foreign powers, because exercisable only by the highest governmental power and so in the nature of a contract between the United States, as a unit, and other countries, would, in a sense, have force in the Islands. The Attorney-General of the Philippines has so held.[14] The Supreme Court of the Philippines has cited and applied treaties of the United States apparently on the assumption that they were applicable here.[15] Against such an assump-

[13] Duarte *v.* Dade (1915) XIII O. G. 2006. See sec. 66 *supra.*

[14] "The Philippine Islands . . . when relations with other countries are concerned, can be taken to be a part of the United States and so come within the provisions of the treaty between the United States and the German Empire." Op. Atty. Gen. P. I., Nov. 14, 1913. "A treaty of the United States with any foreign power must necessarily have force in the Philippine Islands." Mem. Atty. Gen. P. I., Nov. 25, 1913. In accord, Devlin on the Treaty Power, sec. 141. But the courts of Hongkong in the Sotto case took somewhat of a different view.

[15] *E. g.* Treaty with Sweden and Norway, U. S. *v.* Bull (1910) 15 Phil. 7. The Hongkong courts were dubious as to the inclusion of the Philippines within American treaty rights. But the Su-

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tion, however, is the fact that treaties are made by the President with the consent of the Senate, and the President and the Senate are given by the Constitution no direct authority over the territories and dependencies. However these points would be decided, as a matter of fact, few of the provisions of treaties would ever be called in question.

§ 106. Laws of express extension.—The general rule that orders of the President and acts and resolutions of Congress, in order to have force and effect in the Philippines, must have been formally, specifically, and expressly extended thereto is agreed to by all.[16] These orders, resolutions, and statutes then constitute the major portion of the Organic Law of the Islands and form what may be denominated the present Constitution of the Philippines.

The course of reasoning which arrives at this conclusion is this: Congress considered a general and unqualified extension of the Constitution and laws of the United States to the Philippines as impracticable, as recognizing a status not desired, and as needlessly a hamper to future action. Accordingly, in section 1 of the Philippine Bill it was provided that section 1891 of the Revised Statutes of 1878 shall not apply to the Philippines. This section, as we have already seen, reads: "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States." If the Constitution and all laws of the United States do not have

preme Court for the Colony of British Guiana on January 12, 1897, held an Extradition Treaty between Holland and Great Britain applicable to the colony. Ireland, Tropical Colonization, pp. 42, 43.

[16] See U. S. *v.* Bull (1910) 15 Phil. 7, 21, 27; Roa *v.* Collector of Customs (1912) 23 Phil. 315, 339; Tan Te *v.* Bell (1914) 27 Phil. 354, including dissenting opinion by Moreland, J.; 38 Cyc. 202 and notes.

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force in the Philippines, conversely, only such laws, or portions of laws, or orders or resolutions in the nature of law, as the President under his former war powers or Congress under its present civil powers shall extend to the Philippines, are controlling. Finally the Philippine Autonomy Act carries forward the rule by providing "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act." (Sec. 5.)

The vast majority of the acts and resolutions of Congress passed in the ordinary way would be inoperative here. Only those resolutions and acts in which Congress goes out of its way by appropriate language showing legislative intention to have the resolution or act effective in the Philippines would so operate. A few laws of Congress out of extreme caution have provided that they shall not apply to the Philippine Islands.[17]

§ 107. Acts of the Philippine Commission.—Laws of Congress of express extension to the Philippines have also had the result of taking parts of one or more Acts of the Philippine Commission out of the field of ordinary legislation and making of them, in effect, basic laws. The Supreme Court of the Islands emphatically so held, in connection with section 9 of the Philippine Bill, as to portions of Act 136 of the Philippine Commission conferring jurisdiction on the courts.[18] The Attorney-General would undoubtedly have reached a similar conclusion, in connection with section 1 of the Philippine Bill, as to Act 222 of the

[17] *E. g.* Act of Congress, Aug. 13, 1912, "An Act to regulate radio communication" in sec. 10.

[18] Weigall *v.* Shuster (1908) 11 Phil. 340; Barrameda *v.* Moir (1913) 25 Phil. 44; *In re* Guariña (1913) 24 Phil. 37; McGirr *v.* Hamilton (1915) XIII O. G. 878; Conchada *v.* Director of Prisons (1915) XIII O. G. 1478; Schultz *v.* Concepción (1915) XIII O. G. 2211.

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Philippine Commission, providing the organization of the Executive Departments, had not such an opinion been barred by administrative necessity and a fear of creating administrative chaos.[19]

§ 108. Laws of inherent force.—Supplemental to the foregoing discussion relative to the Constitution in the Philippines and consistent with its tendency, is the further doctrine, that certain Acts of Congress have inherent application to the Philippines without express extension.

This point was definitely settled, as far as could be done without further appeal, by the Supreme Court of the Philippines in the case of Tan Te *v.* Bell.[20] Omitting the facts and certain questions raised by demurrer and on appeal, the main question was whether section 3748 of the Revised Statutes of the United States had force in the Philippines so as to protect the Commanding General and other Army officers in their seizure of property. This section reads as follows:

"The clothes, arms, military outfits, and accoutrements furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accoutrements, so furnished, and which have been the subject of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accoutrements, by any person not a soldier or officer of the

[19] Op. Atty. Gen. P. I., Oct. 20, 1913.
[20] 27 Phil. 354 (1914).

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United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift."

The Court of First Instance, after saying that the classification of constitutional provisions finds its counterpart in Federal legislation, continued:

"Some of it (Federal legislation) is in force through the whole territory of the United States; other provisions are of limited or local application. By section 1891 above quoted, Congress has made the entire Federal system of laws applicable to the *incorporated* territories and has later said that this particular mode of extension shall not apply to the Philippines. But this is far from constituting a declaration that 'the Constitution and the laws of the United States do not apply in the Philippines' in order that it may have validity here. The provision of the Philippine Bill merely renders inapplicable a certain blanket extension of Federal laws; it does not exclude other modes of extension or withhold force from Federal legislation inherently applicable here though not expressly extended.

"Now, section 3748 of the United States Revised Statutes appears to be intended to have universal application. It authorized the seizure of the property mentioned '*wherever* found by any officers of the United States, *civil or military*.' It would seem to govern the Army wherever it may be stationed, and it would be strange indeed, if this Archipelago, where so large a part of the Army is on duty under orders, were exempt from its provisions." (Cases cited by the court in footnotes.)

On appeal, the Supreme Court affirmed judgment, Moreland J. dissenting. The Court, speaking through Mr. Justice Trent, asked—Because section 1891 of the Revised Statutes was declared inapplicable to this country, does it necessarily follow that no provision of the Constitution nor any law of Congress has force and effect in the Philippines unless expressly extended and made

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applicable to them by Congress? The extension of a provision of the Constitution was not in question. "Is it true that only those laws of the United States specifically extended to these Islands by Congress have force and effect here?" The Court held:

"Laws for the creation, regulation, and maintenance of the Army, not specifically limited to certain districts, are of nation-wide application and extend to all territory under the jurisdiction of the United States. Subsequent laws of Congress organizing territorial governments do not repeal such laws by implication.

"Section 3748 of the Revised Statutes, conferring upon United States Army officers the power to seize military equipment found in possession of others than soldiers when title has not been legally acquired through the Government of the United States, has force and effect in these Islands, notwithstanding the fact that section 1891 of the Revised Statutes, providing for a blanket extension of the Constitution and laws of the United States to all territories, is made inapplicable to the Philippine Islands by section 1 of the Act of July 1, 1902 (The Organic Act of the Philippine Islands). Section 3748 was enacted to prevent the disposal by soldiers of equipment furnished them while yet serviceable—a widespread practice which had caused unnecessary expenditure for the maintenance of the Army and tended to impair its efficiency. The purpose in prohibiting a blanket extension of the Constitution and laws of the United States to the Philippine Islands was solely to permit the establishment of a form of territorial government better adapted to conditions here than would have been the result by a wholesale extension of the Constitution and laws of the United States. Such object did not conflict with the subject matter of section 3748. To so hold would equally involve other general legislation relating to the Army which has never been specially ex-

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tended to these Islands, as, for instance, the Articles of War.

"Both the Army and the Government of the Philippine Islands were created by Congress to serve the country in widely different capacities. The Army was created for a special service which it may be called upon to perform in any portion of the country. The Government of the Philippine Islands was created with the broad and general powers of civil government, restricted to a particular portion of territory. It is not to be taken by implication that Congress, in creating the latter, intended to impair the efficiency of laws relating to the former which had received the most careful attention at an earlier date." (Syllabus.)

The decision in the Tan Te *v.* Bell case finds some support in opinions of the Federal Courts.[21] Thus Mr. Chief Justice Waite, speaking of the prohibition of the United States Revised Statutes against bigamy, said it prescribed "a rule of action for all those residing in the Territories, and in *places over which the United States have exclusive control.*" [22] Besides in the opinion of the United States Supreme Court in the case of Grafton *v.* United States [23] it was held that the articles of war embodied in an Act of Congress have force and effect in the Philippines, although never specifically extended.

We therefore know that the laws of war, and at least one section of the Revised Statutes enacted for the protection of the Army, have followed this agency of national sovereignty to the Philippines and have consequently in-

[21] *In re* Thomas (1897) 82 Fed. 304, 309; *Ex Parte* Siebold (1880) 100 U. S. 371, 374, 25 L. Ed. 717; Wisconsin Central Railroad Co. *v.* Price County (1890) 132 U. S. 496, 504, 33 L. Ed. 687; *In re* Neagle (1890) 135 U. S. 1, 34 L. Ed. 55. See also Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, 558.

[22] Reynolds *v.* U. S. (1878) 98 U. S. 145, 25 L. Ed. 244.

[23] 206 U. S. 333, 51 L. Ed. 1084 (1907).

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herent force and effect in these Islands without express extension by Congress. What other laws of Congress are in the same class is uncertain.

§ 109. Resultant rules.—The measure of the powers of the Government of the Philippine Islands and the limitations thereon are determined by the following rules:

1. Those provisions of the United States Constitution of universal application, as the Thirteenth Amendment which may operate in the Philippines; 2. Those treaties between the United States and foreign powers, particularly those of local importance, as the Treaty of Paris; 3. Those Orders of the President and those Resolutions and Acts of Congress which have been formally and expressly extended to the Philippines; 4. Those Acts of the Philippine Commission which United States statutes have made organic laws; 5. Those Acts of Congress of universal application, as certain provisions concerning the United States Army which have inherent effect in the Philippines. The first rule has the weight of judicial *dicta* behind it. The second rule is backed by no particular authority but is incontestable. The third rule is generally accepted. The two last rules are made authoritative by decisions of the Supreme Court of the Philippines.

§ 110. The Philippine Bill,[24] the Act of Congress of July 1, 1902, has been for many years the most important of the Organic Laws. A number of later Congressional Acts have amended or repealed its provisions.[25] One of these was the Cooper Law of February 6, 1905,

[24] 32 Stat. at L. Pt. 1, p. 691; Vol. 35 Cong. Rec. 57th Cong. 1st sess.

[25] Sec. 4 by Act of March 23, 1912; sec. 7 by Acts of Feb. 27, 1909, and Feb. 15, 1911; sec. 10 by U. S. Judicial Code, sec. 248; secs. 22, 23, 24, 25, 29, 31, 36, 37, 39, 53, 58, 66 by Act of Feb. 6, 1905; sec. 77 by Act of March 2, 1903, sec. 4; and sec. 78 repealed by Act of March 2, 1903, sec. 13.

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enacted "to provide for the more efficient administration of Civil Government in the Philippine Islands."

The Philippine Bill was the composite of the reports of two Philippine Commissions, the work of the War Department, hearings before Committees of Congress, and legislative conferences.[26] The minority of the House

[26] On January 7, 1902, Mr. Lodge, of Massachusetts, introduced in the Senate a bill (S. 2295) "Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which was referred to the Committee on the Philippines. On the same date Mr. Cooper, of Wisconsin, introduced in the House of Representatives a bill for like purposes, which was referred to the Committee on Insular Affairs.

March 31, the Senate bill, with amendments, was reported by Mr. Lodge, who submitted a report on behalf of the majority. On June 2 the bill was ordered to be printed as amended in Committee of the Whole, and it passed the Senate on June 3.

June 4, the bill as it passed the Senate was received in the House of Representatives, and was referred to the Committee on Insular Affairs.

June 14, the Senate bill was reported from the Committee on Insular Affairs with all after the enacting clause stricken out, and the House bill (H. R. 13445), as an amendment in the nature of a substitute therefor, which, with a report by Mr. Cooper, was ordered to be printed.

On June 26 the House bill, as a substitute for the Senate bill, passed the House of Representatives.

The action of each House of Congress, in passing a distinctive bill for the government of the Philippine Islands, was submitted to a conference committee, representing the Senate and the House of Representatives. On June 30 Mr. Lodge presented an agreement of the conference committee, the Senate receded from its disagreement to the amendment of the House (the House substitute bill), and agreed to the same with an amendment. Mr. Cooper presented the agreement of the conference committee to the House, which agreed to the same. The conference committee report was concurred in by both Houses of Congress, and the bill was approved by the President July 1, 1902. Gazetteer of the Philippine Islands, p. 211; Willis, Our Philippine Problem, pp. 33-39; Jacob Gould Schurman, Philippine Affairs, A Retrospect and Outlook, pp. 37, 38; Kalaw, The Case for the Filipinos, Ch. VII.

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Committee on Insular Affairs reported "a Bill to establish a stable and autonomous government in the Philippines and for other purposes." The report stated that "The theory upon which this substitute measure is framed is that there should be conferred upon them (the Filipino people) for a period of eight years the largest possible share in the government of themselves and in the conduct of their affairs consistent with our safety and best interests and our duty and obligations to the nations of the world, in order to fit them for that absolute independence and self-government to which the minority believe them entitled." A substitute bill "To promote the welfare and establish the independence of the Philippine Islands" was also offered in the Senate by the minority of the Committee on the Philippines. Various amendments were likewise presented. The debate showed more of a desire to discuss Philippine policy than to justify the provisions of the bill.

The Act, as made a law,[27] differed considerably from the Acts organizing the governments in Porto Rico and Hawaii. It partakes but little of the character of a constitutional act.[28] Those provisions which one would nat-

[27] See McKinley, Island Possessions of the United States, p. 253; Willoughby, Territories and Dependencies of the United States, pp. 191-200. Sections of the Philippine Bill have been construed a number of times by the courts and executive officials.

[28] However, the Supreme Court speaks of the Philippine Bill as "the constitution of the Philippine Islands." Conchada *v.* Director of Prisons (1915) XIII O. G. 1478—"the real constitution of the United States government in the Philippine Islands." U. S. *v.* Pompeya (1915) XIII O. G. 1684. But compare the Philippine Bill with the definition of a constitution—A constitution may be defined as that fundamental law of a state which contains the principles upon which government is founded, regulates the division of sovereign powers, and directs to what persons each of these powers is to be intrusted and the manner of its exercise. Bouvier's Law Dictionary; 8 Cyc. 714, 715, citing cases and author-

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urally expect to find, establishing the framework of government, limiting governmental powers, and providing for the political organization of the executive, legislative, and judicial branches are lacking, except that an Assembly is authorized for a future date. The existing outlines of general and local governments were accepted, and the constructive work of the President, the Military Governors, and the Commission was confirmed. The bill of rights was extended. But most of the sections concern general legislation, on such subjects as commerce, the sale and lease of the public lands, the utilization of the forests, granting of mining claims, municipal bonds, franchises, etc.

The Philippine Autonomy Act leaves much of the Philippine Bill intact.

§ 111. The Philippine Autonomy Act,[28a] the Act of Congress of August 29, 1916, is more nearly an organic constitutional Act for the Philippines than the Philippine Bill. It is the result of nearly three years of legislative juggling by Congress. The debate was on most occasions apathetic, and at times showed a lamentable ignorance of Philippine affairs.

The original Jones Bill, as reported to the House of Representatives, provided for a provisional government with an assurance of full independence for the Philippines on July 4, 1921. As the bill passed the house on October 14, 1914, it promised ultimate independence for the Philippines and extended the powers of internal self-government. The Senate failed to take the bill up at that session.

ities; Cooley's Constitutional Limitations 7th Ed., p. 4; 6 R. C. L. p. 16—and with the objects of a constitution—Bryce, Studies in History and Jurisprudence, Vol. I, pp. 229, 230.

[28a] See generally, Kalaw, The Case for the Filipinos, Chs. X, XI; Reports House Committee on Insular Affairs and Senate Committee on the Philippines, especially House report of April 16, 1916.

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On the opening of the succeeding Congress, the Senate Committee on the Philippines reported a Philippine Bill differing slightly from the House bill. During the debate in the Senate what is known as the Clarke Amendment, granting independence in not less than two nor more than four years with a further provision that the President might extend the time and again submit the subject to Congress, was attached and passed the Senate in that form through the deciding vote of the Vice President. The House rejected the Senate bill with the Clarke Amendment. Thereupon a conference committee of the two chambers agreed upon a bill and in that form it passed *pro forma* and was signed by the President.

The Act besides enunciating a Philippine policy is not essentially different from a constitution. There is a frame work of government, a bill of rights, and certain positive powers or prohibitions.

§ 112. Other Organic Laws.—Without getting out of the field of usual acceptance, let us begin with mention of the Treaty of Paris.[29] Then follows chronologically the President's Instructions to the Commission of April 7, 1900, which, because of section 1 of the Philippine Bill, providing that the Islands "shall continue to be governed as thereby (in the Instructions) and herein (the Philippine Bill) provided," is also an organic law.[30] Acts of Congress, having special reference to the Philippines, in addition to the Philippine Bill and the Philippine Autonomy Act, concern the following important subjects: Chinese immigration, the Philippine Constabulary, extradition, coinage, government bonds, railroad construction, tariff, false or spuriously stamped articles of merchandise, immigration of aliens, an agricultural bank, shipping,

[29] See sec. 66 *supra.*

[30] So held in Severino *v.* Governor-General (1910) 16 Phil. 366, 382. See sec. 72 *supra.*

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trade-marks, copyrights, national defense secrets, income taxes, and opium. Various miscellaneous sections of the Revised Statutes of the United States have been carried to the Islands thereby.

A list of the live organic laws, believed to be complete, is appended. Some laws now partially or totally obsolete are included for historical reasons.

List of Organic Laws of the Philippine Islands.

United States Constitution. Possibly the Thirteenth Amendment.

Treaties. Probably all treaties between the United States and foreign countries, but as most important—

Treaty of Paris.—Treaty between the United States and Spain of December 10, 1898.

Protocol of Agreement of March 29, 1900, extending, as to the Philippine Islands, for six months from April 11, 1900, the period fixed in Article IX of the Treaty of Paris during which Spanish subjects, natives of the Peninsula, might declare their intention to retain their Spanish nationality.

Treaty with Spain of November 7, 1900, for the cession of certain outlying islands of the Philippines.

Universal Postal Convention of May 26, 1906, concluded between Germany and German Protectorates, United States of America *and the Island Possessions of the United States of America,* Argentine Republic, Austria, Belgium, Bolivia, Bosnia-Herzegovina, Brazil, Bulgaria, Chili, Chinese Empire, Republic of Colombia, Congo Free State, Empire of Corea, Republic of Costa Rica, Crete, Republic of Cuba, Denmark and Danish Colonies, Dominican Republic, Egypt, Ecuador, Spain and Spanish Colonies, Ethiopian Empire, France, Algeria, French Colonies and Protectorates of Indo-China, the whole of the other French Colonies, Great Britain and

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various British Colonies, British India, the Commonwealth of Australia, Canada, New Zealand, British Colonies of South Africa, Greece, Guatemala, Republic of Hayti, Republic of Honduras, Hungary, Italy and the Italian Colonies, Japan, Republic of Liberia, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Republic of Panama, Paraguay, Netherlands, the Dutch Colonies, Peru, Persia, Portugal and Portuguese Colonies, Roumania, Russia, Salvador, Servia, Kingdom of Siam, Sweden, Switzerland, Tunis, Turkey, Uruguay, and United States of Venezuela.

Orders of the President and Acts of Congress.

The President's Instructions to the Commission, dated April 7, 1900. (Mostly obsolete.)

Order of the President creating the Office of Civil Governor for the Philippine Islands, dated June 21, 1901. (Obsolete.)

Order of the President creating the Office of Vice-Governor, dated October 29, 1901. (Obsolete.)

Act of Congress of February 2, 1901.—An Act to increase the efficiency of the permanent military establishment of the United States (sec. 36, Philippine Scouts), in connection with Act of May 16, 1908, c. 171.

Act of Congress of March 8, 1902.—An Act temporarily to provide revenue for the Philippine Islands, and for other purposes. (Mostly obsolete.)

Act of Congress of March 22, 1902.—Acknowledgements of deeds.

Act of Congress of April 29, 1902.—An Act to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

Act of Congress of July 1, 1902, "The Philippine Bill."

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—An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes. Amended.

Act of Congress of January 30, 1903.—An Act to promote the efficiency of the Philippine Constabulary, to establish the rank and pay of its commanding officers, and for other purposes.

Act of Congress of February 9, 1903.—An Act to provide for the removal of persons accused of crime to and from the Philippine Islands for trial.

Act of Congress of March 2, 1903.—An Act to establish a standard of value and to provide for a coinage system in the Philippine Islands. Amended by Act of Congress of June 23, 1906.

Act of Congress of February 6, 1905.—An Act to amend an Act approved July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an Act approved March eighth, nineteen hundred and two, entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an Act approved March second, nineteen hundred and three, entitled "An Act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes.

Act of Congress of February 6, 1905.—An Act to extend certain provisions of the Revised Statutes of the United States to the Philippine Islands (Extradition).

Act of Congress of February 20, 1905.—An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same. Amended

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by Act of Congress of May 4, 1906, an Act to amend the laws of the United States relating to the registration of trade-marks; by Act of Congress of March 2, 1907, an Act to amend sections five and six of an Act entitled "An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same;" and by Act of Congress of February 18, 1909, an Act to amend the laws of the United States relating to the registration of trade-marks.

Act of Congress of June 13, 1906.—An Act forbidding the importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes.

Act of Congress of June 28, 1906.—An Act to amend section 2844 of the Revised Statutes of the United States, and to provide for an authentication of invoices of merchandise shipped to the United States from the Philippine Islands. (Held to be in force by the Insular Collector of Customs, Letter to Author, March 14, 1916. See also Customs Administrative Circular No. 715.)

Act of Congress of June 30, 1906.—An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes.

Act of Congress of February 20, 1907.—An Act to regulate the immigration of aliens into the United States and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone.

Act of Congress of March 4, 1907.—An Act to provide for the establishment of an agricultural bank in the Philippine Islands.

Act of Congress of March 24, 1908.—An Act to carry

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into effect the international convention of December twenty-first, nineteen hundred and four, relating to the exemption in time of war of hospital ships from dues and taxes on vessels.

Act of Congress of April 29, 1908.—An Act to repeal an Act approved April thirtieth, nineteen hundred and six, entitled "An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes," and for other purposes.

Act of Congress of May 11, 1908.—An Act to increase the membership of the Philippine Commission by one member, and for other purposes. (Obsolete.)

Act of Congress of May 22, 1908, in connection with Act of February 26, 1907. Salary of Resident Commissioners.

Act of Congress of May 28, 1908.—Instruction of Filipinos at U. S. Military Academy.

Act of Congress of February 27, 1909.—An Act to amend an Act approved July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes." (Appropriations.) (Obsolete.)

Act of Congress of March 4, 1909.—An Act to amend and consolidate the Acts respecting copyright.

Act of Congress of March 4, 1909.—Criminal Code, secs. 138, 139 (allowing prisoner to escape).

Joint Resolution, fixing the terms of court in the Philippine Islands, of April 9, 1910, No. 19.

Act of Congress of February 15, 1911.—An Act providing for the quadrennial election of members of the Philippine Assembly and Resident Commissioners to the United States, and for other purposes. (Obsolete.)

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Act of Congress of March 1, 1911.—An Act to protect the dignity and honor of the uniforms of the United States.

Act of Congress of March 3, 1911.—U. S. Judicial Code, sec. 248, U. S. Stats. at L. 1910-11, p. 1158—appeals to U. S. Supreme Court. (Obsolete.)

Act of Congress of March 3, 1911.—An Act to prevent the disclosure of national defense secrets.

Act of Congress of March 23, 1912.—An Act to amend an Act approved July first, nineteen hundred and two. (Providing for acquisition of Philippine citizenship.) (Obsolete.)

Act of Congress of March 1, 1913.—An Act divesting intoxicating liquors of their interstate character in certain cases.

Act of Congress of October 3, 1913.—An Act to reduce tariff duties and to provide revenue for the Government and other purposes. (Income and internal revenue Taxes; Tariff, modifying Act of Congress of August 5, 1909.)

Act of Congress of December 23, 1913.—C. 6, sec. 15 (Deposit of government funds.)

Act of Congress of December 17, 1914.—An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes.

Act of Congress of March 4, 1915.—An Act ratifying the internal revenue tax law of the Philippine Legislature. (Act 2432.)

Act of Congress of August 16, 1916.—An Act to declare the purpose of the people of the United States as to the future political status of the people of the Phil-

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ippine Islands, and to provide a more autonomous government for those Islands.

Acts of the Philippine Legislature. At least portions of Act 136.

Quarantine Laws Enacted by Congress Given Full Effect in Philippine Islands.—The provisions of the Act of Congress approved February fifteenth, eighteen hundred and ninety-three, entitled "An Act granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service," and all subsequent Acts of Congress on the same subject and amendatory thereof, and all rules and regulations heretofore or hereafter prescribed by the Secretary of the Treasury of the United States under such Acts, shall be given full force and effect in the Philippine Islands, so far as applicable. (Administrative Code of the Philippines, sec. 941.)

The Organic Laws can be found in the Philippine Public Laws, U. S. Statutes at Large, U. S. Compiled Statutes of 1913, and the Compilation of the Acts of Congress, Treaties and Proclamations.

§ 113. The Philippine Constitution.[31]—Prophecy is dangerous. May we not, however, venture to suggest a few fundamental principles which should, and undoubtedly will, govern future adoption of a Philippine Constitution?

The constitution will be written. The advantages of such a rigid constitution under Philippine conditions will vastly overbalance the disadvantages. The form, it goes

[31] Read Bryce, Studies in History and Jurisprudence; Jamison on Constitutional Conventions; Borgeaud, Adoption and Amendment of the Constitutions in Europe and America; Bancroft, History of the Constitution of the United States; Dicey, The Law of the Constitution; Hart, Actual Government; Bryce, The American Commonwealth; Tucker on the Constitution; Cooley's Constitutional Law; 6 R. C. L. pp. 1 *et seq.;* 8 Cyc. pp. 714 *et seq.;* Kalaw, *Teorias Constitucionales;* Kalaw, *Documentos Constitucionales;* Writings of Mabini.

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without saying, will be Republican. Consequently, a constitutional convention, called pursuant to action by the Philippine Legislature and the Governor-General, composed of delegates elected by popular vote from among the best men of the Islands, irrespective of party, race, or creed, will frame it. The people will then vote directly, approving or rejecting the labor of their servants

The experience of all ages and of all peoples will be made use of. The ideal will be to register the totality of centuries of struggles for liberty. No constitution can hope to be original. Especially will the Malolos Constitution, the Spanish Constitution, the Cuban Constitution, the constitutions of the South American Republics, and the Constitution of the United States be carefully studied. Parts of the Malolos Constitution will now be found inappropriate. The Spanish Constitution will influence methods of thought more than substance. The Constitution of the Republic of Cuba so markedly similar in history, traditions, and status will furnish valuable lessons. The constitutions of South American countries will appeal strongly to sentiment because of a sort of spiritual kinship between them and the Philippines. The Constitution of the United States will be made the basis of many provisions, in order to demonstrate Philippine appreciation of American effort and institutions, in order to secure continuity of jurisprudence, because familiar to the leading publicists of the Islands and the younger generation, and because universally recognized as the leading constitution of the world. The extent of American constitutional influence will depend to a great extent on the date of independence—increasing proportionately with the length of American sovereignty. Particularly will the bill of rights, won with so much blood on the field of battle by Englishmen, made the bulwark of American liberties, and now the heritage of the Filipino people,

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be retained.[32] But even if the American Constitution be "the most wonderful work ever struck off at a given time by the brain and purpose of man," it is not heresy to suggest that the mistake of a slavish copying of American precedent will not be made. Over a century of experience has pointed out defects in the American constitutional system. For example, as opposed to the American Constitution, there will be close relations between legislation and administration, a budget system, ministerial responsibility, election of a President for six years with no re-election permitted, and a unitary, not a federal, system. Further, it is merely a truism to state that what may be good for the United States may not be found equally valuable for the Philippines. Finally, the writings of the ablest statesmen of the country and the present organic law, particularly the basic principles found in the next chapter which we have endeavored to describe with so much labor expressly for this purpose, will constitute a direct and potent source for the new constitution.

The constitution will conform to the requisites of a good written constitution. It will be broad, brief, definite, stable, immutable, and paramount. "The constitution of a state is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events; notwithstanding the competition of opposing interests and the violence of contending parties, it remains firm and immovable, as a mountain amidst the strife of storms, or a rock in the ocean amidst the raging of the waves." [33] It will enumerate, but not de-

[32] One project prepared by a prominent Filipino leader is known to contain a provision to the effect that in the event of the United States granting independence to the Philippines, the present Bill of Rights shall be considered fundamental and definitely established as an integral part of the Constitution of the Philippine Islands.

[33] Van Horne *v.* Dorrance (1795) 2 Dall. 304, 309. "That the

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fine. It will be alterable only by special process. It will contain within itself security against disorder and revolution. It will shield the people against the assumption of arbitrary power. It will be suitable to the circumstances, desires, and aspirations of the people. The constitution will be the supreme law of the land. A bicameral legislature will stop the passage of hasty legislation. The judges will serve during good behavior. The courts can declare statutes violating constitutional provisions unconstitutional. Sovereignty will lie in the people. The objects of the constitution will be to establish and maintain a permanent form of government under which the work of the State can be efficiently carried on, to assign to the three departments their respective powers and duties, to provide security for the rights of the individual citizen, and to strengthen the cohesiveness of the nation. In other words, there will be three distinct parts: the framework of the government, the bill of rights, and the schedule.

A perfect constitution need not be expected. What Hamilton quoted from Hume to prove such a constitution impossible, will be as true for the Philippines as elsewhere: "The judgment of many must unite in the work; experience must guide their labors; time must bring it to perfection; and the feeling of inconvenience must correct the mistakes which they inevitably fall into in their first trial and experiment." And to be success-

people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent." Marshall, C. J., in Marbury *v.* Madison (1803) 1 Cranch 137, 2 L. Ed. 60.

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ful the constitution must be considered not as the cause but as the consequence of personal and political freedom.

When the constitution, which we have dared to describe, shall be framed and adopted, when commentaries thereon shall be indicted, and when the courts shall assume to construe its provisions, then the existing organic law will be valuable mainly by virtue of authority and as a cultural chapter in Philippine constitutional history.

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REPRESENTATIVE AUTHORITIES.

National Bank *v.* County of Yankton (1880) 101 U. S. 129, 25 L. Ed. 1046.

Tan Te *v.* Bell (1914) 27 Phil. 354.

Barrameda *v.* Moir (1913) 25 Phil. 44.

Vol. 35, Congressional Record, Philippine Bill.

Vols 51 *et seq.,* Congressional Record, Philippine Autonomy Act.

Maximo M. Kalaw, The Case for the Filipinos (1916) Chs. VII, X, XI.

Acts of Congress pertaining to the Philippines, printed in Philippine Public Laws, U. S. Statutes at Large, and U. S. Compiled Statutes.

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CHAPTER 9.

BASIC PRINCIPLES.

§ 114. The Philippine bill of rights.
115. Rights withheld.
116. "A government of laws and not of men."
117. Division of powers.
118. Delegation of powers.
119. Irrepealable laws prohibited.
120. Legislative privileges.
121. Rule of the majority.
122. Law of public officers.
123. Interstate comity.
124. Aliens.
125. Citizenship.
126. Immunity of government from suit.
127. Taxation, eminent domain, and police power explained.
128. Taxation.
129. Eminent domain.
130. Police power.
131. Various fundamental privileges and immunities.
132. Rights of accused in criminal prosecutions.
133. Suspension of the writ of habeas corpus.
134. Ex post facto laws.
135. Bills of attainder.
136. Excessive bail, excessive fines, and cruel and unusual punishments.
137. Unreasonable searches and seizures; warrants.
138. Treason.
139. Imprisonment for debt.
140. Due process of law and equal protection of the laws.
141. Slavery, involuntary servitude, and peonage.
142. Freedom of speech and press; assembly and petition.
143. Religious liberty.
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147. Subject and title of bills.
148. The enacting clause.
149. Obligation of contracts.
150. Titles of nobility; presents, etc., from foreign states.
151. Law of primogeniture.
152. Polygamy.
153. Appropriations.
154. Indebtedness.

§ 114. The Philippine bill of rights.—As we have heretofore noticed, the Constitution of the United States does not as a whole apply *ex propio vigore* to the Philippine Islands. Nevertheless, all the most significant of the American Bill of Rights, declaratory of the foundation rights of the people, are here effective both in legislative phraseology and in judicial construction.

President McKinley, in his Instructions to the Philippine Commission, imposed "these inviolable rules" upon every branch and division of the Government of the Philippine Islands. He said that "the Commission should bear in mind, and the people of the Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their Islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar. It is evident that the most enlightened thought of the Philippine Islands fully appreciates the importance of these principles and rules, and they will inevitably

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within a short time command universal assent." [1] Congress included these guaranties of constitutional liberty in the Philippine Bill and re-enacted them with a few changes in the Philippine Autonomy Act. The parallel columns which we use at the head of the sections shows graphically that for some unexplained reason the existing Philippine Bill of Rights differs slightly in language but not in substance from the bill of rights contained in the United States Constitution and State constitutions. Other basic principles upon which the government of the United States and other governments rest, although not expressly a part of the written law, are, because of their inherent nature, just as much a part of the Philippine governmental edifice. The result in the words of Mr Justice Trent of the Supreme Court of the Philippine Islands is that "these fundamental principles . . . have been since the organization of the Philippine Commission, the law of the land, and upon them, has been reared our present Civil Government in these Islands." [2] Mr. Justice Day, in an exhaustive opinion for the United States Supreme Court in the case of Kepner *v.* United States said:

"That it was the intention of the President in the instructions to the Philippine Commission to adopt a well-known part of the fundamental law of the United States, and to give much of the beneficent protection of the bill of rights to the people of the Philippine Islands, is not left to inference. . . .

"These words (of the President's Instructions) are not strange to the American lawyer or student of constitu-

[1] "The significance of the document granting constitutional liberties to the Filipino people is as profound as that of the Magna Charta or the Declaration of Independence." Wright, A Handbook of the Philippines, p. 106. For the origin of the Philippine Bill of Rights see Kalaw, *Teorías Constitucionales,* pp. 5, 6.

[2] Severino *v.* Governor-General (1910) 16 Phil. 366, 383.

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tional history. They are the familiar language of the Bill of Rights, slightly changed in form, but not in substance, as found in the first nine amendments to the Constitution of the United States, with the omission of the provision preserving the right to trial by jury and the right of the people to bear arms, and adding the prohibition of the thirteenth amendment against slavery or involuntary servitude except as a punishment for crime, and that of article 1, section 9, to the passage of bills of attainder and *ex post facto* laws. These principles were not taken from the Spanish law; they were carefully collated from our own Constitution, and embody almost verbatim safeguards of that instrument for the protection of life and liberty.

"When Congress came to pass the act of July 1, 1902, it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. In view of the expressed declaration of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights, there would seem to be no room for argument that in this form it was intended to carry to the Philippine Islands those principles of our Government which the President declared to be established as rules of law for the maintenance of individual freedom, at the same time expressing regret that the inhabitants of the Islands had not theretofore enjoyed their benefit." [3]

Although the statement may surprise some American readers, there can also be found scattered through the

[3] 195 U. S. 100 (1904) 11 Phil. 669, 690, 692. "The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the 'Bill of Rights,' were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors." Robertson *v.* Baldwin (1897) 165 U. S. 275, 281, 41 L. Ed. 715.

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Spanish Codes in force in the Philippines many provisions declaratory or protective of personal rights which, in effect, correspond largely to the ideals of American constitutional law. A keen critic, however, frankly admits that "the most superficial comparison of the old with the recent laws shows that personal rights have been strengthened with more effective guaranties, the benefits of which had never before been enjoyed."[4] A comparison of the existing Bill of Rights with that of the Malolos Constitution also shows a difference in phraseology but not in substance.

What is most noteworthy is the fact that these great principles of American liberty and democracy carried with them the even greater opinions of the courts. In the Kepner case, Mr. Justice Day, after analyzing the Philippine Bill of Rights and speaking of "the intention of Congress to carry some at least of the essential principles of American constitutional jurisprudence to these Islands and to engraft them upon the law of this people, newly subject to our jurisdiction," propounded the following rhetorical question: "How can it be successfully maintained that these expressions of fundamental rights, which have been the subject of frequent adjudication in the courts of this country, and the maintenance of which has been ever deemed essential to our Government, could be used by Congress in any other sense than that which has been placed upon them in construing the instrument from which they were taken?"[5] To ascertain the meaning of a phrase in the Bill of Rights the Court said it was necessary to refer to the common law from which the phrase was taken. Stated as a proposition, the Supreme Court of the United States has settled that "the

[4] Abreu, The Blending of the Anglo-American Common Law with the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, pp. 290 *et seq.*

[5] 195 U. S. 100, (1904) 11 Phil. 669, 690, 692, 694.

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guaranties extended by Congress to the Philippine Islands are to be interpreted as meaning what the like provisions meant when Congress made them applicable to those Islands." [6] In practically every appeal to this tribunal of last resort, the Court has gone for authority to adjudications of similar provisions of the United States Constitution. The Insular courts are, of course, bound by the rule. Thus Mr. Justice Elliott, speaking for our Supreme Court, said that: "The President and Congress framed the government on the model with which Americans are familiar, and which has proven best adapted for the advancement of the public interests and the protection of individual rights and privileges. In instituting this form of government the intention must have been to adopt the general constitutional doctrines which are inherent in the system." [7] The same Justice in another opinion observed that: "Within the relation created by the Acts of Congress the general principles of American constitutional law apply whenever they can be made applicable." [8]

Ordinarily, therefore, the Philippine delver after judicial lore can turn with perfect safety to the doctrines established by American constitutional law. Since these cases fill tome upon tome, the scope of this chapter only permits of a use of the applicable cases coming from the local courts or from Philippine appeals to the United

[6] Serra *v.* Mortiga (1907) 204 U. S. 470, 11 Phil. 762, following Kepner *v.* U. S. *id.* See also Weems *v.* U. S. (1910) 217 U. S. 349, 54 L. Ed. 793; Freeman *v.* U. S. (1910) 217 U. S. 539, 54 L. Ed. 874; Diaz *v.* U. S. (1912) 223 U. S. 442, 56 L. Ed. 500; Alzua *v.* Johnson (1912) 21 Phil. 308, 332, and other Philippine cases.

[7] U. S. *v.* Bull (1910) 15 Phil. 7, 28.

[8] Ocampo *v.* Cabañgis (1910) 15 Phil. 626, 632. "The primary function of constitutional law is to ascertain the political center of gravity of any given state. It announces in what portion of the whole is to be found the internal sovereignty, *'suprema potestas,' 'Staatsgewalt,'* . . . In other words, it defines the form of government." Holland, Jurisprudence, 11th Ed., p. 365.

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States Supreme Court, with inclusion of a few other especially appropriate views. We group the section subjects where possible but where not possible, we follow the easy plan of assuming the order of the legislator in enacting the Bill of Rights.

After finishing the task of reading the sections which follow, is it only a mere aphorism to say that we possess a Philippine constitutional law?

§ 115. Rights withheld.—The President and Congress withheld from the Filipino people the provisions of the Bill of Rights of the United States Constitution preserving the right of the American people to keep and bear arms, security of the dwelling from the quartering of soldiers in time of peace, and trial by jury.[9] The reason for reserving the right of trial by jury Mr. Justice Day

[9] See Kepner *v.* U. S. (1904) 195 U. S. 100, 11 Phil. 669; William H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, pp. 305 *et seq.* printed in "The Philippines," pp. 98-100; Special Report of William H. Taft, Secretary of War, to the President on the Philippines, pp. 40, 41. The provisions of the United States Constitution mentioned are as follows:

"A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Second Amendment.

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." Third Amendment.

"The trial of all crimes, except in cases of impeachment, shall be by jury." Article III, sec. 2.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." Fifth Amendment.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." Sixth Amendment.

"In suits at common law, where the value in controversy shall

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said in the case of Dorr *v.* United States "was doubtless due to the fact that the civilized portion of the Islands had a system of jurisprudence founded upon the civil law, and the uncivilized parts of the Archipelago were wholly unfitted to exercise the right of trial by jury." [10] The same case definitely decided that, in the absence of Congressional legislation to that end, there was no right to demand trial by jury in criminal cases in the Philippines. Neither is presentment of an indictment found by a grand jury necessary.[11]

It is not certain that the safety of the people of the Philippines is at all endangered or that they are deprived of any beneficent constitutional right by reason of the non-existence of these provisions. The right to keep and bear arms would only apply to arms used in civilized warfare, and even as to these there could be regulations providing that they shall not be carried in a concealed manner or fired within the limits of a city. Undoubtedly the present Philippine law held valid by the Supreme Court, requiring licenses from the private owners of firearms could still be applied, if the constitutional provision was in force.[12] The quartering of soldiers in private houses in time of peace is an evil not practised in the United States or the Philippines; and as Judge Cooley remarks "its declaration seems to savor of idle form and cere-

exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." Seventh Amendment.

[10] 195 U. S. 138 (1904) 11 Phil. 706, 713, affirmed in later cases. See also in connection therewith Hawaii *v.* Mankichi (1903) 190 U. S. 197, 47 L. Ed. 1016, and Rasmussen v. U. S. (1905) 197 U. S. 516, 49 L. Ed. 862. Similarly, the jury system although existing in a modified form in Spain, was never extended to the Philippines. See Walton's Civil Law in Spain and Spanish-America, p. 498.

[11] Dowdell *v.* U. S. (1911) 221 U. S. 325, 55 L. Ed. 753.

[12] U. S. *v.* Villareal (1914) 28 Phil. 390.

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mony." [13] The most important—trial by jury—has not proved especially successful in operation and it is even to be doubted if it should be adopted here under any circumstance.[14] The right, fixed by statute, to demand assessors in justice of the peace courts, the municipal court for the city of Manila, and Courts of First Instance, for both criminal and civil cases, is in a way the equivalent of a jury.[15] Moreover, the rights withheld are more than balanced by the granting of other rights not found in the national Constitution but taken from state constitutions—imprisonment for debt, subject and title of bills, the enacting clause, etc.

§ 116. "A government of laws and not of men."— These words, which Rufus Choate so eloquently said, should be spared "in their very rust" as one "would spare the general English of the Bible" were placed in the Declaration of Rights of the Massachusetts Constitution of

[13] Cooley's Constitutional Limitations, 7th Ed., p. 435.

[14] Eusebio Lopez, Should Trial by Jury be Adopted in the Philippine Islands, 6 Philippine Law Review, January, 1915, p. 778, answers in the negative.

[15] Code of Civil Procedure, secs. 57-62, 153-161; Act 267, sec. 13; Act 2369; Act 2520; Adm. Code, sec. 2449. "While the conditions here are for the present unsuited to the introduction of the Anglo-Saxon system of jury trials, provision is made for the selection of assessors from the residents of the municipality or province best fitted by education, natural ability and reputation for probity to assist in the trial of actions and to advise the judge in his determination, and securing the right of review of the facts by a higher court in case the assessors shall certify that in their opinion the finding of facts and the judgment are wrong. The provisions for assessors apply in courts of justices of the peace as well as in the courts of first instance. This system is one that was adopted under the treaty of Berlin for use in Samoa under the protectorate, and has long been usefully employed in British and German colonial possessions. The employment of assessors is useful not merely as an aid to the judge but also as giving a greater safeguard to the parties, and as a means of education for the people." Report of the Philippine Commission, 1901, Vol. I, p. 88.

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1780 as the climax to emphatic negation against one department exercising the powers of another—"to the end it may be a government of laws and not of men." [16] Here is seen not merely beautiful verbiage of a famous constitution, not merely the ultimate cause for the separation of the powers, but an axiom of representative government become part and parcel of it. The American Government (and with it the Philippine Government) "as has been often observed, is a government of law, and not a government of men." [17] Under no other constitutional theory than that inherent in the system in the United States and the Philippines, particularly with reference to the independence of departments, Mr. Justice

[16] Part the First, Art. XXX. Professor Thayer giving the Massachusetts Constitution, Cases on Constitutional Law, Vol. I, pp. 381 *et seq.*, adds this note: "It is plain that where the law is made by one man there it may be unmade by one man; so that the man is not governed by the law, but the law by the man, which amounts to the government of the man, and not of the law. Whereas the law being not to be made but by the many, no man is governed by another man, but by that only which is the common interest; by which means this amounts to a government of laws and not of men." James Harrington, The Art of Lawgiving, Preface; Oceana and Other Works, 3d Ed. 386.

"Sir," said Rufus Choate, in the Massachusetts Convention of 1853, for revising the Constitution of the State (1 Debates, 120), "that same Bill of Rights, which so solicitously separates executive, judicial, and legislative powers from each other, 'to the end,'—in fine and noble expression of Harrington, borrowed from the 'ancient prudence,' one of those historical phases of the old glorious school of liberty of which this Bill of Rights is so full,—and which phrases I entreat the good taste of my accomplished friends in my eye, to whom it is committed, to spare in their very rust, as they would spare the general English of the Bible,—'to the end it may be a government of laws, and not of men;' that same Bill of Rights separates the people, with the same solicitude, and for the same reason, from every part of their actual government,—'to the end it may be a government of laws and not of men."

[17] Brewer, J., in Reagan *v.* Farmers' Loan & Trust Co. (1894) 154 U. S. 362, 38 L. Ed. 1014.

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Elliott of the Supreme Court of the Philippines has said, "could there be that government of laws and not of men which is essential for the protection of rights under a free and orderly government." [18]

So long as the imperfections of mankind necessitate the over-lordship of commands, laws must be made to be obeyed by all, if free institutions are to continue. No man—no set of men—no party—can wantonly be permitted to set the law at naught. The humblest citizen must realize that he is protected in his rights from the arbitrary will of the highest official. The most powerful man must realize that he has to bow before the majesty of the law. Even a judge of the most exalted court, Mr. Justice Carson has said is not "above or beyond the law which it is his high office to administer."[19] Attorneys especially must ever be the fearless vindicators of individual rights.

Mr. Justice Matthews of the Supreme Court of the United States has well said:

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many

[18] U. S. *v.* Bull (1910) 15 Phil. 7, 28.
[19] Alzua *v.* Johnson (1912) 21 Phil. 308, 348.

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cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." [20]

Mr. Justice Miller said in another case:

"No man in this country is so high that he is above the law. No officer of the law may set the law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

"It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives." [21]

Shall the Government of the Philippine Islands be a Government of Men or a Government of Laws? If a Government of Men whatever be decided as to its form,

[20] Yick Wo *v.* Hopkins (1886) 118 U. S. 356, 370, 30 L. Ed. 220.
[21] U. S. *v.* Lee (1882) 106 U. S. 196, 220, 27 L. Ed. 171.

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it will fall as all such governments have fallen. If a Government of Laws, it is assured of one vital element of success. Let him who loves his country revere its laws to the end (to parody the phrase) that the Philippines may thrive as a free, happy, and prosperous country.

§ 117. Division of powers.[22]—An analysis of government into three powers was first developed as a canon of enlightened political science by Baron De Montesquieu in his *L'Esprit des Lois* (the Spirit of the Laws) appearing in 1748. The idea, however, was possibly as old as Aristotle, was found by Montesquieu in the so-called English Constitution, and later was reproduced and popularized in America by Blackstone—but to Montesquieu belongs the merit of showing the necessity of separate departments and of drawing to himself the leading minds of the time.[23] The great French publicist under the heading "Of the Constitution of England" writes:

"In every government there are three sorts of power; the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law. . . . The latter we shall call the judiciary power, and the other simply the executive power of the state.

"The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another. When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate

[22] See generally Op. Atty. Gen. P. I., Jan. 27, 1912; 6 R. C. L. pp. 144 *et seq;* Willoughby on the Constitution, Vol. II, Ch. LXIII.

[23] See well considered opinion of Durfee, J., in Mauran *v.* Smith (1865) 8 R. I. 192, 5 Am. Rep. 564; Madison, Federalist No. 47; 1 Cooley's Blackstone, p. 234.

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should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." [24]

The triple division was coeval with the States of the American Union. It became one of the original contributions of the national Constitution. Mr. Justice Miller in the leading case of Kilbourn *v.* Thompson said:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other." [25]

[24] The Spirit of Laws, Book XI, Ch. 6. The editor adds this note: "The greater part of the principles produced in this chapter by Montesquieu is derived from Locke's 'Treatise upon Civil Government,' xii."

[25] 103 U. S. 168, 190, 26 L. Ed. 387 (1881). Daniel Webster, speaking of this subject in another relation, said, "a separation of

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The theory of three co-ordinate and independent powers is not such as is implied in abstract statements. Familiar instances to be found in the American Government, and even in the Constitution, of an official of one department lawfully performing a duty properly classified under another department could be recited.[26] Nor is it

departments, so far as practicable, and the preservation of clear lines of division between them, is the fundamental idea in the creation of all our constitutions, and, doubtless, the continuance of regulated liberty depends on maintaining these boundaries." Webster's Works, Vol. iv. p. 122. Johnson, J., in Barcelon *v.* Baker, 5 Phil. (1905) 87, 115, said: "*No government,* past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of its citizens than the government of the United States and of the various states of the Union. Each of the three departments of the government has had separate and distinct functions to perform in this great labor. The history of the United States, covering more than a century and a quarter, discloses the fact that each department has performed its part well. No one department of the government can or ever has claimed, within its discretionary power, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres, harmoniously working to maintain good government, peace and order, to the end that the rights of each citizen be equally protected. No one department can claim that it has a monopoly of these benign purposes of the government. Each department has an exclusive field within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary limits and assume to act there. No presumption of an abuse of *these discretionary powers* by one department will be considered or entertained by another. Such conduct on the part of one department, instead of tending to conserve the government and the rights of the people, would directly tend to destroy the confidence of the people in the government and to undermine the very foundations of the government itself."

[26] *E. g.* The President signs bills and thus performs a legislative act; the Senate confirms appointments and ratifies treaties and thus becomes a partaker in the functions of the Executive; it tries impeachment cases and thus exercises a judicial power; a court makes rules and incidentally makes a law; it appoints court officials and

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always easy to distinguish a legislative from a judicial act, a legislative from an executive act, etc. The axiomatic statement of Mr. Chief Justice Marshall relative to the difference between the departments was "that the legislature makes, the executive executes, and the judiciary construes, the law." [27] Expanded somewhat in application to the Philippines, the statement reads: "The legislature must enact laws subject to the limitations of the organic laws. . . . The executive must execute such laws as are constitutionally enacted. The judiciary, as in all governments operating under written constitutions, must determine the validity of legislative enactments, as well as the legality of all private and official acts." [28] But fine analytical lines cannot be drawn. "The grant of the powers embraced in one of the great departments of government carries with it the right to use means appropriate to the exercise of that power. Any attempt to cripple the power through metaphysical classification of the means essential to its exercise must produce difficulties, if not absurdities." [29] Moreover, there have been those who have contended that one power either should be or is superior to the other two. Mabini, for example, in his Political Trinity illumines the general principle in this beautiful figure of speech: "Society,

incidentally has performed an executive function. In the case of U. S. *v.* Bull (1910) 15 Phil. 7, 27, Mr. Justice Elliott said: "In neither Federal nor State governments is this separation such as is implied in the abstract statement of the doctrine. For instance, in the Federal government the Senate exercises executive powers, and the President to some extent controls legislation through the veto power. In a State the Governor is not a member of the legislative body, but the veto power enables him to exercise much control over legislation."

[27] Wayman *v.* Southard (1825) 10 Wheat. 46, 6 L. Ed. 263.

[28] U. S. *v.* Bull (1910) 15 Phil. 7, 28.

[29] Appeal of Norwalk St. Ry. Co. (1897) 69 Conn. 576, 39 L. R.A. 794. See also State *v.* Harmon (1877) 31 Ohio St. 250.

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then, should have a soul: authority. This authority should have a brain to guide and direct it: the legislative power. A will that works and makes it work: the executive. A conscience to try and punish the bad: the judicial power. These powers should be independent in the sense that one should not encroach upon the attributes of the other." "But," he adds, "the last two should be made subservient to the first, just as will and conscience are subordinated to reason." [80] Finally, it can not be denied that attempts by one department to trespass on the domain of another have been made. To quote again from Mr. Justice Miller as to the American experience: "While the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success. Powerful and growing temptations," he states are presented "to those to whom that exercise is intrusted, to overstep the just boundaries of their own department, and enter upon the domain of one of the others, or to assume powers not intrusted to either of them." [81]

[80] Holt, Introduction to the Study of Government, p. 38, says: "Although in theory the three departments in the governmental organization are of equal importance, in actual practice the legislative department is seen to have the greatest power. In all governments, that department exercises a measure of control over the executive and judiciary, either by its office of allotting funds for the expenses of other departments or by its regulations for their performance of their functions."

[81] Kilbourn *v.* Thompson (1881) 103 U. S. 168, 26 L. Ed. 387. Of legislative power, Madison in No. 47 of the Federalist said: "Is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." Of judicial power, the late Mr. Justice Harlan in his perspicuous dissenting opinion in the Standard Oil Case (1911) 221 U. S. 1, 105, 55 L. Ed. 663, said: "After many years of public service at the national capital, and after a somewhat close observation of the conduct of public affairs, I am

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The three independent departments of government exist in the Philippine Islands. In the words of Mr. Justice Trent—"This Government being modeled after the Federal and State governments in the United States now possesses a complete governmental organization, with executive, legislative, and judicial departments, which are, exercising functions as independent of each other as the Federal or State governments." [32] Every governmental step under the American administration developed such a division, until in section fifteen of the Administrative Code it became expressly recognized. The specific duties imposed, such as the large and uncontrolled power of the Governor-General, the creation of an independent judiciary serving practically during good behavior, and the freedom from arrest of members of the Legislature and the right of the House and the Senate to be the sole judge of the qualifications of its members and to discipline them,

impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction." And of executive power, one has only to recur to the newspapers and periodicals to form an estimate of the extent of the criticism against executive encroachment.

[32] Severino *v.* Governor-General (1910) 16 Phil. 366, 384. In accord Judge George R. Harvey, The Administration of Justice in the Philippine Islands, 1 Philippine Law Journal, Feb., 1915, p. 330. But Commissioner Singson in an article entitled "The Filipino Legislator; His Difficulties and Successes," I Philippine Law Journal, August, 1914, p. 12, dissents. He says: "The present government of the Islands, owing to its state of transition does not rest, as in all other constitutional countries, on the basis of a division of powers, legislative, executive and judicial, for although the judicial power is absolutely separate from the legislative, it is not separate from the executive power, (or at least was not prior to the enactment of what is commonly termed the judicial reorganization act), and the executive power is intimately connected with the legislative power, so that it can be said that the system is entirely lacking in precedents from other civilized nations."

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most sharply define the boundaries between the departments. As said by Mr. Justice Elliott, "the separation of powers is as complete as in most governments." [33] If anything, the Executive, because of his direct and close relations with the President of the United States and because of his membership in the Legislature and his indirect control over some of its members has been above the Legislature in influence. However, legislation and administration should be on intimate terms if there is to be business-like efficiency, somewhat as under the cabinet system of government.[34] Nevertheless, even with this concession, the checks and balances of government must be as jealously guarded here as elsewhere. The executive, legislative, and judicial branches of government are fundamentally co-ordinate and co-important, but if one assumes the powers of the other, the usurper becomes the superior and not an equal. Mr. Justice Moreland expounds this doctrine at length in the following language:

"The three departments are not only co-ordinate; they are co-equal and co-important. While interdependent, in the sense that each is unable to perform its functions fully and adequately without the other, they are, nevertheless, in many senses independent of each other. That is to say, one department may not control or even interfere with another in the exercise of its particular functions. This, of course, is fundamental. That the court may declare a law passed by the legislature unconstitutional and void, or an act of the executive unauthorized and illegal; or that the legislature may curtail within limits the jurisdiction and power of the courts, or restrict, in a measure, the scope of executive action; or that the executive may, by his veto, render null and ineffective the acts of the legislature and thus effectually thwart the pur-

[33] U. S. *v.* Bull (1910) 15 Phil. 7, 27.
[34] Woodrow Wilson, The State, p. 569.

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poses of the majority, does not affect that independence. These are merely the checks and balances made by the people through the constitution inherent in the form of government for its preservation as an effective institution. In spite of these checks and balances, if not by reason of them, the fundamental departments of the government are independent of each other in the true sense of the word. The quality of government consists in their remaining so." [35]

In applying general principles to actual facts, each department of the Government of the Philippine Islands has done so largely speaking, within the rule early stated by Mr. Justice Johnson, namely: *"Under the form of government established in the Philippine Islands, one department of the Government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department."* (italics those of court.)[36] While what is hereafter said illustrates the scrupulous attitude of the judiciary toward the legislature and the executive, the essentials would apply as well, were authorities available, to the counter relations of the executive to the judiciary and legislature and of the legislature to the judiciary and the executive.

[35] Province of Tarlac *v.* Gale (1913) 26 Phil. 338, 349. Johnson, J., in Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, 574, likewise said: "Each department should be sovereign and supreme in the performance of its duties within its own sphere, and should be left without interference in the full and free exercise of all such powers, rights, and duties which rightfully, under the genius of the government, belong to it. Each department should be left to interpret and apply, without interference, the rules and regulations governing it in the performance of what may be termed its political duties. Then for one department to assume to interpret or to apply or to attempt to indicate how such political duties shall be performed would be an unwarranted, gross, and palpable violation of the duties which were intended by the creation of the separate and distinct departments of the government."

[36] Barcelon *v.* Baker (1905) 5 Phil. 87, 96.

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The Supreme Court of the Philippine Islands was hardly organized, when in an opinion written by the Chief Justice it refused to interfere with the Executive in restrictions imposed on the admission of foreigners.[37] The administration of the immigration laws belonging to the executive branch of the government, the judicial branch (as held in a large number of cases) will not assume jurisdiction, unless it is shown conclusively that there has been an abuse of authority or a violation of the law.[38] In the famous Chinese Expulsion case, Mr. Justice Johnson, speaking for our Supreme Court, held that "In the exercise of his political duties the Governor-General is, by the laws in force in the Philippine Islands, invested with certain important governmental and political powers and duties belonging to the executive branch of the government, the due performance of which is entrusted to his official honesty, judgment, and discretion. So far as these governmental or political or discretionary powers and duties which adhere and belong to the Chief Executive, as such, are concerned, it is universally agreed that the courts possess no power to supervise or control him in the manner or mode of their discharge or exercise." [39] On appeal to the United States Supreme Court, judgment was affirmed in substance, and the further doctrine laid down that "an Act of State is a matter not cognizable in any municipal court." [40] The Supreme Court of the Philippines has consistently applied the doctrine in another direction by holding that when the Governor-General, with the approval of the Philippine Commission, had declared a suspension of the writ of habeas corpus, this decision was conclusive against the judicial

[37] *In re* Patterson (1902) 1 Phil. 93.
[38] Lo Po *v.* McCoy (1907) 8 Phil. 343 and other cases.
[39] Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, 578.
[40] Chuoco Tiaco *v.* Forbes (1913) 228 U. S. 549, 57 L. Ed. 960.

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department.[41] So also if a sentence in a criminal case has become final and the defendant is in the custody of the executive department, the judicial department cannot alter the sentence even if inadvertently injustice has been done.[42] But the most far reaching decision came when in an exhaustive opinion, the Supreme Court refused to control or interfere with the official duties of the Governor-General.[43] As to administrative officers lower in rank than the Chief Executive, the well-known principles of Public Officers and Extraordinary Remedies apply. Within these rules which the cases cited enunciate, the judiciary can control a duty not discretionary imposed by law on a public officer.[44] But generally the courts will confine themselves to the enforcement of legal and equitable rights, "leaving the administrative affairs of the government to administrative officials." [45]

For identical reasons, the courts will not only not assume legislative powers,[46] but will indulge every possible presumptive in favor of the validity of a statute.[47] When the courts are forced to declare a law unconstitutional, it is a duty performed not to make the judiciary supreme but

[41] Barcelon *v.* Baker (1905) 5 Phil. 87.

[42] U. S. *v.* Court of First Instance (1913) 24 Phil. 321.

[43] Severino *v.* Governor-General (1910) 16 Phil. 366. Same rule for Porto Rico. Navarro *v.* Post (1909) 5 Porto Rico Fed. 61.

[44] See Debrunner *v.* Jaramillo (1908) 12 Phil. 316; Asunción *v.* Yriarte (1914) 28 Phil. 67; Lamb *v.* Phipps (1912) 22 Phil. 456, etc. When duties are imposed on an executive officer in regard to which he has no discretion, and in the execution of which individuals have a direct pecuniary interest, and there is no other plain, speedy, and adequate remedy, he may be required to perform those duties by the compulsory process of mandamus. State *v.* Eberhart (1911) 116 Minn. 313, 39 L.R.A. (N.S.) 788; State *v.* Huston (1910) 27 Okla. 606, 34 L.R.A. (N.S.) 380. Similarly as to injunction.

[45] Olsen *v.* Hernstein (1915) XIV O. G. 166.

[46] West Coast Life Insurance Co. v. Hurd (1914) 27 Phil. 401.

[47] See sec. 176 *infra,* especially notes 140, 145.

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to protect the people in their rights.[48] "If an act of the legislature is held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental laws of the land and because the will of the people, as declared by such fundamental laws, is paramount and must be obeyed, even by the legislature." [49] The subject is explained by the United States Supreme Court in a case of Philippine origin as follows:

"We disclaim the right to assert a judgment against that of the legislature, of the expediency of the laws, or the right to oppose the judicial power to the legislative power to define crimes and fix their punishment, unless that power encounters in its exercise a constitutional prohibition. In such case, not our discretion, but our legal duty, strictly defined and imperative in its direction, is invoked. Then the legislative power is brought to the judgment of a power superior to it for the instant. And for the proper exercise of such power there must be a comprehension of all that the legislature did or could take into account,—that is, a consideration of the mischief and the remedy. However, there is a certain subordination of the judiciary to the legislature. The function of the legislature is primary, its exercise fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of its wisdom or propriety. They have no limitation, we repeat, but constitutional ones, and what those are the judiciary must judge." [50]

Although the question has never arisen in this jurisdiction, there is also every reason to believe that the ju-

[48] See Hamilton in the Federalist No. 78.
[49] Johnson, J., in U. S. *v.* Ten Yu (1912) 24 Phil. 1, 11.
[50] Weems *v.* U. S. (1910) 217 U. S. 378, 379, 54 L. Ed. 803.

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diciary would not attempt to issue an injunction or mandamus to the Philippine Legislature.[51]

The judiciary must, of course, resist encroachment on its constitutional powers by the other departments. "Its preservation in its integrity and effectiveness is necessary to the present form of government." [52] In a leading Virginia case, the court reached the following conclusions: "That in the courts created by the Constitution there is an inherent power of self-defense and self-preservation; that this power may be regulated, but cannot be destroyed, or so far diminished as to be rendered ineffectual by legislative enactment." [53] Mr. Justice Elliott in overruling a motion to set aside a judgment of the Philippine Supreme

[51] Injunction against legislature—see State *v.* Thorson (1896) 9 S. D. 149, 33 L.R.A. 582. Mandamus against legislature—see De Diego *v.* House of Delegates, 5 Porto Rico 235 and *Ex Parte* Echols (1866) 39 Ala. 698, 88 Am. Dec. 749. The court will not entertain direct proceedings to admit, exclude, or reinstate any member of the state legislature contrary to the decision of that body after it has legally organized, *In re* Gunn (1893) 50 Kan. 155, 251-253, 19 L.R.A. 519 (cases); Hiss *v.* Bartlett (1855) 3 Gray 468, 63 Am. Dec. 768; French *v.* Senate (1905) 146 Cal. 604, 69 L. R.A. 556; nor will they declare a vacancy in the membership thereof, Covington v. Buffett (1900) 90 Md. 569, 47 L.R.A. 622. Hall's Cases on Constitutional Law, p. 106, note.

[52] Moreland, J., in Province of Tarlac *v.* Gale (1913) 26 Phil. 338, 348. "In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of the public liberty which cannot subsist long in any state unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law, which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative." 1 Cooley's Blackstone, p. 234.

[53] Carter *v.* Commonwealth (1899) 96 Va. 791, 45 L. R. A. 310.

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Court for failure to comply with section 45 of Act 136, providing for a statement of the grounds of the judgment, said that: "A constitutional court (and in a broad sense the courts of the Philippines are such) when exercising its proper judicial functions can no more be unreasonably controlled by the legislature than can the legislature when properly exercising legislative power be subjected to the control of the courts." [54] Consequently, the jurisdiction granted the Courts of First Instance and the Supreme Court by the Organic Law can be added to but not diminished by the Legislature.[55] But the enactment of a curative Act by the Legislature would not be an invasion of judicial power.[56] On the other hand, a purely legislative or executive power not incidental to the exercise of a proper judicial function can not be imposed on a court.[57] Finally, the courts can not be deprived of the power to control their proceedings, methods of work, officers and attendance, surroundings, and other incidents necessary to the unfettered discharge of their

[54] Ocampo *v.* Cabañgis (1910) 15 Phil. 626, 631.

[55] Weigall *v.* Shuster (1908) 11 Phil. 340; Barrameda *v.* Moir (1913) 25 Phil. 44; U. S. *v.* De Guzman (1915) XIII O. G. 1173; *In re* Guariña (1913) 24 Phil. 37.

[56] Government of Philippine Islands *v.* Standard Oil Co. (1911) 20 Phil. 35; Chuoco Tiaco *v.* Forbes (1913) 228 U. S. 549, 57 L. Ed. 960.

[57] "It is also certain that the judicial power does not include the exercise of such a legislative function, (as control of street railways), and that the duty of making such regulations cannot be imposed upon the superior court, because it involves the exercise of legislative power by the court, and because a power in the legislature to impose such duties is inconsistent with the existence of an independent and separate judicial department of government." Appeal of Norwalk St. Ry Co. (1897) 69 Conn. 576, 39 L. R. A. 794. See also State *v.* Bates (1905) 96 Minn. 110, 114. As to performance of administration acts by the courts see Hayburn's Case (1792) 2 Dall. 409, 1 L. Ed. 436; U. S. *v.* Ferreira (1851) 13 How. 40, 14 L. Ed. 42.

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judicial duties.[58] Where a court of first instance issued orders to the provincial authorities for the proper equipment of the court room which orders they failed to obey, the Supreme Court on certiorari upheld the lower court. In the course of the opinion by Mr. Justice Moreland it was said:

"The judiciary has the power to maintain its existence; and whatever is reasonably necessary to that end, courts may do or order done. But the right to live, if that is all there is of it, is a very small matter. The mere right to breathe does not satisfy ambition or produce results. Therefore, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins. The power to interfere is the power to control, and the power to control is the power to abrogate. The sovereign power has given life to the judiciary and nothing less than the sovereign power can take it away or render it useless. The power to withhold from the courts anything really essential for the administration of justice is the power to control and ultimately to destroy the efficiency of the judiciary. Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated

[58] See Hall's Cases on Constitutional Law, p. 81, note.

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to any person or official to which their creator did not itself subordinate them.

"The courts cannot permit any official to take or withhold from them anything which is vital to their functions, nor can an official, by the exercise of any judgment or discretion of his own, escape an obligation which he is under to the courts. The courts alone can, while the obligation continues, release him therefrom. If, therefore, the officials of a province are under an obligation to the Court of First Instance of that province to furnish shelter, furniture, fixtures, supplies, equipment, etc., when, in the serious and deliberate judgment of the court, they, or any of them, are necessary for the administration of justice, they cannot escape that obligation except by permission of the court." [59]

§ 118. Delegation of powers.—If the cardinal principle of republican government concerning separation of powers is to have effect, a subsidiary proposition that no department, except when authorized by the Constitution, can abdicate authority or escape responsibility by delegating any of its powers to another body, is vital to the maintenance of this system. The Executive rarely attempts such evasion of duties, but on the contrary is much more liable to take over functions in the twilight zone not assumed by anyone or to transgress on the field of others. That judicial powers can not be delegated to non-judicial officers is a rule strictly applied. Judicial offices must be exercised in person.[60] The Philippine executive officers who come closest to exercising judicial functions are the Insular Collector of Customs, the Di-

[59] Province of Tarlac *v.* Gale (1913) 26 Phil. 338, 349. Controversies of this sort can now be controlled under sec. 2029 Adm. Code.

[60] Reybold *v.* Dodd's Adm'r. (1834) 1 Har. (Del.) 401, 26 Am. Dec. 401; State *v.* Noble (1889) 118 Ind. 350, 21 N. E. 244, 10 A. S. R. 143, 4 L. R. A. 101. *E. g.* under Torrens System of Land

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rector of Labor, and the Board of Public Utility Commissioners. Referees and commissioners merely make reports of facts to the court.[61] Even as to such officials our Supreme Court has held that "Except by express provision of law, courts cannot delegate their functions and where there is a provision permitting such delegation it must be made in the form and manner prescribed." [62]

Most questions arise relative to delegation of legislative power. The classic statement of the rule is that of Locke, namely, "The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have." [63] Judge Cooley, in language approvingly quoted by the authorities, enunciates the principle as follows: "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign

Registration, State *v.* Guilbert (1897) 56 Ohio St. 575, 47 N. E. 551, 60 A. S. R. 756, 38 L. R. A. 519. But indeterminate sentences, the parol system, etc., are usually upheld, State *v.* Wolfer (1912) 119 Minn. 368, 138 N. W. 315, Ann. Cas. 1914A 1248, 42 L. R. A. (N. S.) 978. See 6 R. C. L., pp. 172 *et seq.*

[61] Code of Civil Procedure, secs. 135, 140, 184, 243, 497; Act 294, etc.

[62] Labiano *v.* McMahon (1914) 28 Phil. 168, 173.

[63] Locke on Civil Government, sec. 142.

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trust." [64] The Supreme Court of the Philippines, after giving this quotation, appends the following: "This doctrine is based on the ethical principle that such a delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another." [65] The rule obviously applies to a territorial legislature, to the Philippine Legislature, and to a local body with legislative functions.[66]

An exception to the general rule having importance for the Philippines is the right of Congress to delegate legislative authority to such agencies in the Islands as it may select.[67] Another exception is the legal right of the central legislative body to delegate legislative powers to local authorities. Immemorial practice permits such delegation as fundamental in democratic government.[68] The laws by which the Philippine Commission and Legislature organized provinces, municipalities, and townships are therefore valid, since not prohibited by the Organic Law and since in accord with American custom.

[64] Cooley's Constitutional Limitations, 7th Ed., p. 163.

[65] Tracey, J., in U. S. *v.* Barrias (1908) 11 Phil. 327, 330.

[66] Territorial Legislature, 88 Cyc., p. 207, citing cases; Philippine Legislature, U. S. *v.* Barrias, *id.;* Local bodies, Elliott, Municipal Corporations, 2d Ed., p. 89, Macy, Cases on Municipal Corporations, pp. 228-240, Op. Atty. Gen. P. I. Jan. 10, 1912.

[67] Dorr *v.* U. S. (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706; U. S. *v.* Heinszen (1907) 206 U. S. 370, 51 L. Ed. 1098.

[68] "It is a cardinal principle of our system of government, that local affairs shall be managed by local authorities, and general affairs by the central authority; and hence, while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self-government has never been held to trench upon that rule. Such legislation is not regarded as a transfer of general legislative power, but rather as the grant of the authority to prescribe local regulations, according to immemorial practice, subject, of course, to the interposition of

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There are also several qualifications to the main rule, a few of which can be mentioned: Legislative power, according to many authorities, must not be delegated to the people at large.[69] The constitutionality of the referendum depends on the attitude of the courts in applying this principle. But reference to the people peculiarly interested may be made.[70] Local option legislation is generally upheld.[71] Discretion may be committed to the other departments.[72] Familiar instances are rules and regula-

the superior in cases of necessity."—Fuller, C. J., in Stoutenburgh *v.* Hennick (1889) 129 U. S. 141, 147, 32 L. Ed. 637. "It seems to be generally conceded," the court says in State *v.* Noyes (1855) 30 N. H. 279, "that powers of local legislation may be granted to cities, towns, and other municipal corporations and it would require strong reasons to satisfy us that it could have been the design of the framers of our Constitution to take from the legislature the power which has been exercised in Europe by governments of all classes from the earliest history, and the exercise of which has probably done more to promote civilization than all the other causes combined; which has been constantly exercised in every part of our country from its earliest settlement, and which has raised up among us many of the most valuable institutions."

[69] 6 R. C. L. 164; Opinion of the Justices (1894) 160 Mass. 586, People *v.* Kennedy (1913) 207 N. Y. 533.

[70] Cooley's Constitutional Limitations, 7th Ed., pp. 166 *et seq.;* 6 R. C. L. 167.

[71] Ackerson *v.* City of Des Moines (1908) 137 Iowa, 452.

[72] Marshall, C. J., in Wayman *v.* Southard (1825) 10 Wheat. 1, 6 L. Ed. 253. See Union Bridge Co. *v.* U. S. (1906) 204 U. S. 364, 51 L. Ed. 523 reviewing previous decisions of the United States Supreme Court and holding that legislative and judicial powers are not unconstitutionally delegated to the Secretary of War by the provision of the river and harbor act of March 3, 1899 (30 Stat. at L. 1121, 1153, chap. 425, U. S. Comp. Stat. 1901, p. 3545), No. 18, empowering that official, when satisfied, after a hearing of the parties interested, that a bridge over a navigable water way of the United States is an unreasonable obstruction to navigation, to require such changes or alterations as will render navigation reasonably safe, easy, and unobstructed.

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tions promulgated by executive officers.[73] Violations thereof can even be punished as a public offense, but "must have clear legislative basis."[74] Of course, executive rules and regulations can not alter or amend the law.[75] Boards such as our Public Utility Commission can be constituted to regulate occupations and professions, and even to fix just and reasonable rates of public service companies. Delegation of authority to Boards of Special Inquiry in immigration cases is valid.[76] A power to determine some fact or state of thing on which the law may depend or whether a case comes within the statute may be delegated.[77] In an early Ohio case, since consistently followed, Judge Ranney said: "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." [78] The taking effect of a complete statute may be made conditional on some subsequent event.[79] Thus a law may be enacted with the proviso that it shall only be effective on proclamation by the Executive, or it may be suspended by similar means.[80]

The foregoing rules, which undoubtedly require ex-

[73] See 6 R. C. L. 177.

[74] U. S. *v.* Grimaud (1911) 220 U. S. 506, 55 L. Ed. 563; U. S. *v.* George (1913) 228 U. S. 14, 57 L. Ed. 712. See Willoughby on the Constitution, Vol. II, pp. 1327 *et seq.*

[75] Morrill *v.* Jones (1883) 106 U. S. 466, 27 L. Ed. 267; Merritt *v.* Welsh (1882) 104 U. S. 694, 26 L. Ed. 896.

[76] Lorenzo *v.* McCoy (1910) 15 Phil. 559 and many other cases.

[77] See 6 R. C. L. 175, 176.

[78] Cincinnati, W. & Z. R. Co. *v.* Clinton County Comrs. (1852) 1 Ohio St. 88.

[79] Cooley's Constitutional Limitations, 7th Ed. p. 165; 6 R. C. L. 166.

[80] See 6 R. C. L. 170-172.

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planation to be freely understood, apply as well to the Philippines, with one limitation which should not be forgotten,—that "the powers, duties, and responsibilities conferred upon the Governor-General are far more comprehensive than those conferred upon State Governors." —And again, as said by the Supreme Court, that "the powers and duties of the Governor-General of the Philippine Islands are not specifically stated in the Organic Acts." [81] The principal case of the United States *v.* Barrias [82] besides confirming the general principles here quoted, only went so far as to sustain harbor rules prescribed by the Insular Collector of Customs. An exhaustive opinion of the Attorney-General of the Philippines dated June 29, 1909, held Act 1902 entitled "An Act authorizing the Governor-General to direct that any unexpended balances of appropriations be returned to the general fund of the Insular Treasury and to transfer from the general fund moneys which have been returned thereto" an undue grant of legislative power. Another opinion of the Attorney-General, while frankly admitting of doubt, was constrained to advise that Act 1748 (Adm. Code, sec. 82) concerning the Governor-General's authority relative to adjustments of provincial and municipal boundaries and the change of capitals, was valid. These two opinions merely exemplify the familiar practice of the Legislature to grant a great deal of power to the Governor-General and other executive officials. Whether these laws, and all the various rules and regulations [83] which are issued almost daily by members of the Executive Department, are in conformity with constitutional principles are moot questions.

[81] Trent J. in Severino *v.* Governor-General (1910) 16 Phil. 366, 385.

[82] 11 Phil. 327 (1908).

[83] See Adm. Code, secs. 79, 292 and sec. 164 *infra.*

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§ 119. Irrepealable laws prohibited.[84]—Analogous to the principle which forbids the Legislature to delegate its discretionary authority, is another principle estopping the Legislature from passing irrepealable laws. Should this not be so, legislative power might step by step be diminished. Consequently, a legislative body, as the Philippine Legislature or a municipal council, cannot bind or limit the discretion of its successors by removing something from their reach. A qualification is the constitutional prohibition regarding laws impairing the obligation of contracts.[85]

A leading authority explains the principle prohibiting a legislature from limiting the future discretion of successors in the following words:

"Unlike the decision of a court, a legislative act does not bind a subsequent legislature. Each body possesses the same power, and has the right to exercise the same discretion. Measures, though often rejected, may receive legislative sanction. There is no mode by which a legislative act can be made irrepealable, except it assume the form and substance of a contract. If in any line of legislation a permanent character could be given to acts, the most injurious consequences would result to the country. Its policy would become fixed and unchangeable on great national interests, which might retard, if not destroy, the public prosperity. Every legislative body, unless restricted by the constitution, may modify or abolish the acts of its predecessors; whether it would be wise to do so is a matter for legislative discretion." [86]

[84] See Cooley's Constitutional Limitations, 7th Ed., pp. 174-176; 1 Cooley's Blackstone, 4th Ed., p. 82; Lewis' Sutherland on Statutory Construction, sec. 244, quoted in Duarte *v.* Dade (1915) XIII O. G. 2006; Elliott, Municipal Corporations, 2d Ed., pp. 91 *et seq.*

[85] See sec. 149 *infra.*

[86] Bloomer *v.* Stolley (1850) 5 McLean, 158, Fed. Cas. No. 1559.

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§ 120. Legislative privileges.—

Philippines.

"The Assembly shall be the judge of the elections, returns, and qualifications of its members. . . . It may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member." (Philippine Bill, sec. 7, last paragraph, portion.)

"That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, and each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. . . .

"The senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place." (Philippine Autonomy Act, sec. 18, portion.)

United States.

"Each House shall be the judge of the elections, returns, and qualifications of its own members. . . .

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. . . .

"The Senators and Representatives . . . shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place." (United States Constitution, Art. I, secs. 5, 6, portions.)

The leading constitutional systems agree in providing for freedom of arrest and for liberty of debate, under certain conditions, for legislators.[87] Philippine law (Ad-

[87] See Burgess, Political Science and Constitutional Law, Vol. II,

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ministrative Code, sec. 111) contains similar provisions in statutory form. The Legislature further re-affirms certain rights and privileges of the Houses in the exercise of their functions. (Administrative Code, secs. 116, 117, 118.)

Freedom of legislators from arrest [88] is not absolute. Indeed, since the excepting words, "Treason, felony, and breach of the peace" have been construed to mean all indictable crimes, the exemption from arrest is not very important.[89] Dangerous men can not find shelter behind the privilege. But it is sufficient to permit members to perform their legislative functions, to serve the public without hindrance, and to estop baseless arrests for party purposes.

Parliamentary freedom is universally recognized in the United States and in England, Germany, France, and elsewhere. Professor Burgess says "The fullest and most complete ventilation of every plan, object and purpose is necessary to wise and beneficial legislation. This could never be secured if the members should be held under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more, is now reported to the public; but the danger to the general welfare from its curtailment is far greater than that to individuals from its exercise." [90] Mr. Chief Justice Parsons, in the old case of Coffin *v.* Coffin, said by the United States Supreme Court to be "perhaps the most authoritative case in this

pp. 121, 122; 6 R. C. L. pp 257, 258; and Kalaw, *Teorías Constitucionales,* pp. 93-95.

[88] See Cushing on Law and Practice of Parliamentary Assemblies, secs. 546-597.

[89] Williamson *v.* U. S. (1908) 207 U. S. 425, 52 L. Ed. 278.

[90] Burgess, Political Science and Constitutional Law, Vol. II, p. 122.

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country on the construction of the provision in regard to freedom of debate in legislative bodies," [91] quotes the twenty-first article of the declaration of rights to the effect that "the freedom of deliberation, speech and debate in either house of the legislature is so essential to the rights of the people, that it cannot be the foundation of any accusation, or prosecution, action or complaint in any other court or place whatsoever." He continues "these privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office, without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution of the office; and I would define the article, as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office; without enquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules. I do not confine the member to his place in the house; and I am satisfied that there are cases, in which he is entitled to this privilege, when not within the walls of the representatives' chamber." [92]

§ 121. Rule of the majority.—Another unwritten law of popular government of relatively recent de-

[91] Kilbourn *v.* Thompson (1881) 103 U. S. 168, 26 L. Ed. 377, which see for an extended discussion of the subject.

[92] 4 Mass. 1, 3 Am. Dec. 189 (1808). See Cooley's Constitutional Limitations, 7th Ed., pp. 634-636.

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velopment is faith in the rule of the majority. A minority have rights protected by constitutional law which the majority must respect.[93] Nevertheless, submission of the minority in times of stress and political excitement must be learned, if peaceful democracy is to prosper. President Wilson says that "the force of modern governments is not now often the force of minorities. It is getting to be more and more the force of majorities. The sanction of every rule not founded upon sheer military despotism is the consent of a thinking people." [94]

A rather distressing example in the Philippines is the keen dislike of the defeated in electoral contests to submit gracefully to the mandate of the people and thereafter earnestly to co-operate with the victor. Interminable election contests are costly and usually unavailing.

§ 122. Law of public officers.[95]—The maxim is, an office is a public trust. "Public offices are created for the purpose of effecting the ends for which government has been instituted, which are the common good, and not the profit, honor, or private interest of any one man, family, or class of men." [96] A public officer is one participating in the exercise of the powers or receiving the emoluments of a public office.[97] Consequently, an office is not in the nature of a contract. An agreement by which some one other than the person voted for and elected is to perform the duties of the office, in the strong language of Mr. Chief Justice Wilmot "is void *ab initio,* by the common

[93] See Loan Association *v.* Topeka (1875) 20 Wall. 656, 22 L. Ed. 455; Cooley's Constitutional Law, 3d Ed., pp. 40, 41.

[94] The State, p. 586.

[95] See generally Mechem on Public Officers; Dillon's Municipal Corporations, 5th Ed.; 29 Cyc., p. 1356, article by Frank J. Goodnow; Goodnow's Cases on the Law of Public Officers.

[96] Brown *v.* Russell (1896) 166 Mass. 14.

[97] Mechem on Public Officers, pp. 1 *et seq.;* 29 Cyc., pp. 1361 *et seq.*

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law, by the civil law, moral law, and all laws whatever."[98] The distinction is between office and employment, or between officer and employee.[99] Officers are of two classes —*de jure* and *de facto*. The *de facto* doctrine is to the effect that the acts of one who, although not the holder of a legal office, was actually in possession of it under some color of title or under such conditions as indicated the acquiescence of the public in his action, can not be impeached in any suit to which such person is not a party.[100] The doctrine "was introduced into the law as a matter of policy and necessity, to protect the interest of the public and individuals, where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. It was seen, as was said, that the public could not reasonably be compelled to show a title, and these became settled principles in the law. But to protect those who dealt with such officers when apparent incumbents of offices under such apparent circumstances of reputation or color as would lead men to suppose they were legal officers, the law validated their acts as to the public and third persons, on the ground that, as to them, although not officers *de jure,* they were officers in fact, whose acts public policy required should be considered valid." [101] So a judge who, in good faith, continues to act and is recognized by common error after the abolition of his court by statute is deemed judge *de facto* of the new court which succeeds to the jurisdiction

[98] Collins *v.* Blantern, 2 Wils. 341 (1 Smith's L. C. Pt. 2, 673). See Robertson *v.* Robinson (1880) 65 Ala. 610.

[99] See Adm. Code, sec. 2.

[100] 29 Cyc., p. 1389. The Philippine Legislature gives legislative sanction to the doctrine by providing in sec. 503, Adm. Code, that "when an ineligible person is elected and assumes office, his official acts done prior to his removal from office shall be valid."

[101] State *v.* Carroll (1871) 38 Conn. 449.

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of that presided over by him, and a judgment pronounced by the judge *de facto* is valid and binding.[102]

Qualification for office can be fixed, and is here fixed, by the Legislature. Contrariwise, disqualifications can be named, as, conviction of a crime with deprivation of the right to vote, because of the nature of the calling, and because of an absolute prohibition, like that prohibiting a member of the Legislature during the term for which he was elected from being eligible to any office, the election to which is vested in the Legislature, or from being appointed to any office under the authority of the Government of the Philippines, which shall have been created or the emoluments whereof shall have been increased during such time by the Government, except when the office shall be temporary, or shall be held outside of the Philippines, or shall be occupied without salary or emoluments.[103] Many times the holding of two offices are incompatible. In the leading case on the subject, Mr. Justice Folger said: "The force of the word (incompatibility) in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one toward the incumbent of the other." [104] And Mechem on Public Officers, in the same connection, says: "This incompatibility which shall operate to vacate the first office exists when the nature and duties of the two offices are such as to render it improper, from considera-

[102] U. S. *v.* Abalos (1901) 1 Phil. 73.

[103] See the Philippine Autonomy Act, sec. 18, last par.; The Election Law; Compiled Municipal Code, sec. 15; Adm. Code, secs. 119, 529; 4 Op. Atty. Gen. P. I. 640; 5 Op. Atty. Gen. P. I. 481; U. S. Constitution, Art. 1, sec. 6, par 2.

[104] People *v.* Green (1874) 58 N. Y. 295; 3 Op. Atty. Gen. P. I. 449.

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tions of public policy, for one person to retain both. . . . It must be an inconsistency in the *functions* of the two offices, as judge and clerk of the same court, claimant and auditor, and the like." [105] A surprisingly large number of actual cases, which have resolved whether offices are incompatible, will be found decided in the notes on pages 15-17 of the Compiled Municipal Code. An office is usually accepted by qualifying, taking an oath, and for some appropriate positions, by filing a bond. Acceptance should not be regarded by the patriotic citizen as a burden, like in England where failure to accept was penalized, but as a duty or out of an ambition either to serve the public good or to attain higher honors.[106] An officer may often hold office until his successor is appointed or elected and qualified. A resignation to be accomplished must be made to, and accepted by, one having authority to do so.[107] In the absence of constitutional provision or statutory regulation, the power of removal is incident to the power of appointment.[108] Ordinarily cause should be assigned and hearing had. Philippine law provides such procedure for suspension or removal,—in the Civil Service Law for Civil Service employees; in the Election Law and the general statutes for municipal and provincial officers; in the Judiciary Reorganization Act for Judges of First Instance; and in other laws for other officers and employees. As to compensation, if an office, it is not based on contract and may not be assigned.

The municipal laws prohibit municipal officers from

[105] Mechem on Public Officers, p. 268; 1 Op. Atty. Gen. P. I. 99. See for local constructions, Malcolm's Compiled Municipal Code, sec. 15, notes.

[106] See Edwards *v.* U. S. (1880) 103 U. S. 471, 26 L. Ed. 314; People *v.* Williams (1893) 145 Ill. 573.

[107] See U. S. *v.* Neri Abejuela (1908) 12 Phil. 30 and Reiter *v.* State (1894) 51 Ohio St. 74.

[108] *Ex parte* Hennen (1839) 13 Pet. 230, 10 L. Ed. 138.

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being directly or indirectly interested in any municipal contract, contract work, or other municipal business or in cockpits or other licensed games and amusements, or in the purchase of any real estate or any other property belonging to the corporation.[109] This general rule, says Judge Dillon, "is based upon principles of reason, of morality, and of public policy." Its purpose, says Attorney-General Villamor, "is to insure fidelity to official duties. It should not, however, be so construed as to interfere with the strictly private privileges of municipal officials." [110] In Wardell *v.* Railroad Company, the United States Supreme Court held: "It is among the rudiments of the law that the same person can not act for himself and at the same time, with respect to the same matter, as the agent of another whose interests are conflicting. Thus a person can not be a purchaser of property and at the same time the agent of the vendor. The two positions impose different obligations, and their union would at once raise a conflict between interest and duty; and 'constituted as humanity is, in the majority of cases duty would be overborne in the struggle.' . . . The law, therefore, will always condemn the transactions of a party in his own behalf when, in respect to the matter concerned, he is the agent of others, and will relieve against them whenever their enforcement is seasonably resisted." [111] Honorable Charles B. Elliott, former Secretary of Commerce and Police, in his revised text on Municipal Corporations, states the rule relative to the disqualifications of a member of a local board on account of interest as follows: "A general principle similar to that which invali-

[109] See Malcolm's Compiled Municipal Code, sec. 28 and notes.

[110] Op. Atty. Gen. P. I., May 5, 1909, following Dillon's Municipal Corporations.

[111] 103 U. S. 651, 658, 26 L. Ed. 509, 511 (1881). See also 2 Op. Atty. Gen. P. I. 682.

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dates a transaction by an agent or a trustee in which he has an interest adverse to his principal or *cestui que trust,* applies to public officers in general, and therefore to members of a board or council while exercising official discretion on behalf of the public or of a public corporation; and invalidates any affirmative action by such a body which rests upon the concurrence of a member who is adversely interested in the matter concerned. . . . But many courts have adopted a much stricter doctrine than this, namely, that no transaction or vote is valid if any member is interested adversely to the corporation in favor of accomplishing it. It is said that the influence and interest of such a member must necessarily affect the others, and further that the corporation or the public is entitled to the disinterested counsel and judgment of all." [112] And in the Cyclopedia of Law and Procedure, in the article by Professor Goodnow followed by the Attorney-General, appears the following: "There is a general rule of law that no member of a governing body shall vote on any question involving his own character or conduct, his right as a member, or his pecuniary interest, if that be immediate, particular, and distinct from the public interest." [113]

Officers of the Executive Department are criminally liable to the general public under the appropriate provisions of the Penal Code, the Administrative Code, and other laws.[114] Act 1740, especially, is designed to punish bonded public officers for the crime of misuse of Government funds or property intrusted to their care, whether

[112] Elliott, Municipal Corporations, 2d Ed., p. 174; People *v.* Township Board (1863) 11 Mich. 222.

[113] 28 Cyc., p. 337, quoted and applied in Op. Atty. Gen. P. I. Oct. 18, 1910.

[114] Penal Code, Book II, Title 7; Administrative Code, Book IV. See also Compiled Municipal Code, sec. 28, and notes, and late case of U. S. *v.* Udarbee (1914) 28 Phil. 382.

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such officers profit thereby themselves or whether third persons reap the benefit through the abandonment, fault, or neglect of the officer. [115] The orders of superiors and of the courts must be obeyed. "The maintenance of public order and the existence of the commonwealth itself, depend upon the enforcement of the mandates of the courts and require prompt obedience to them, not only by private citizens, but in a special manner by the Government officers who are particularly charged with a knowledge of the law and with the duty of obeying it."[116] Officers may also be civilly liable in contract or tort to individuals or to the State. Some of the tests which determine the liability of the officer are whether the act was within or in excess of authority, and whether the act was discretionary or ministerial. [117] When the property of one person is taken by a sheriff upon an execution against another person, the sheriff is liable as any private person would be for wrongfully taking the property of another. [118] As to individual civil liability, in the language of Mr. Justice Harlan of the United States Supreme Court: "The same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions, apply to a large extent to official communications made by heads of executive departments when engaged in the discharge of duties imposed upon them by law. The interest of the

[115] U. S. *v.* Garces (1915) XIII O. G. 1841 and many other cases.

[116] Weigall *v.* Shuster (1908) 11 Phil. 340, 354.

[117] See Lamb *v.* Phipps (1912) 22 Phil. 456; Mendoza *v.* De Leon (1916) XIV O. G. 581; Adm. Code, secs. 5, 6.

[118] Osorio *v.* Cortez (1912) 24 Phil. 653, following Waite *v.* Peterson (1907) 8 Phil, 449, Quesada *v.* Artacho (1907) 9 Phil. 104. Uy Piaoco *v.* Osmeña (1907) 9 Phil. 299. See also People *v.* Schuyler (1850) 4 N. Y. 173.

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people requires that due protection be accorded to them in respect of their official acts. As in the case of a judicial officer, we recognize a distinction between action taken by the head of a department in reference to matters which are manifestly or palpably beyond his authority, and action having more or less connection with the general matters committed by law to his control or supervision." [119] The Election Law contains stringent penal provisions, which provide punishment for elected officials. [120] There is no remedy by civil suit against a legislative body. The civil liability of judges, according to the Code of Civil Procedure, section 9, is restricted thus: "No judge, justice of the peace or assessor shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith, and within the limits of his legal powers and jurisdiction." In a late Philippine case, it was held that under the law, as it now exists in the Islands, judges of superior and general jurisdiction are not liable to respond in civil actions for damages for what they may do in the exercise of their judicial functions when acting under their legal powers and jurisdiction.[121]

The Government of the Philippine Islands is only liable for the negligent acts of its officers, agents and employees when they are acting as special agents within the meaning of paragraph 5 of article 1903 of the Civil Code.[122]

§ 123. Interstate comity.—The bases of Private International Law or Conflict of Laws, brought about

[119] Spalding *v.* Vilas (1895) 161 U. S. 483, 40 L. Ed. 780.

[120] See Villamor, *Tratado de Elecciones*, 2d Ed., Chs. XVI-XVIII.

[121] Alzua *v.* Johnson (1912) 21 Phil. 308, following Bradley *v.* Fisher (1872) 13 Wall. 335, 20 L. Ed. 646, and Cooley on Torts, 2d Ed., pp. 475-78,—affirmed on appeal to U. S. Supreme Court, 231 U. S. 106, 58 L. Ed. 142 (1913).

[122] Merritt *v.* Government of the Philippine Islands (1916) XIV O. G. 1077, following decisions of the Supreme Court of Spain.

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through interstate comity and concerning the situs of practically every branch of the law, will be found discussed in texts on those subjects.[122a] These rules, except as varied by Congressional or Philippine legislation, it is to be presumed, will be enforced by the courts of the Philippines. A local statutory example exactly in accord with the principles of International Law is that marriages contracted outside the Islands are valid.[123]

Starting from a constitutional rather than an international basis, that portion of Article IV of the United States Constitution which declares that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof," is not in force in the Philippines. Congress has legislated upon this subject by providing that "The acts of the legislature of any State or Territory, *or of any country subject to the jurisdiction of the United States,* shall be authenticated by having the seal of such Territory, State, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, *or of any such country,* shall be proved or admitted in any other court within the United States, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are

[122a] See Minor, Conflict of Laws; Wharton, Conflict of Laws; Gestoso, *Desecho Internacional Privado;* De Joya, *Principios de Derecho Internacional Privado*, etc.

[123] General Orders No. 68, The Marriage Law, sec. IV.

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taken." [124] It would seem that, from the national aspect, the Philippine Islands is a "country subject to the jurisdiction of the United States." However that may be, from the Philippine standpoint, the Code of Civil Procedure contains in statutory form provisions somewhat similar to the Constitution. Many matters, as official acts of the Government of the United States and of the States, are judicially recognized.[125] Public writings of the United States, the States, and foreign countries are admissible in evidence.[126] Foreign judicial records can be produced upon competent proof.[127] Judicial records of a court in the United States or a foreign country are given effect under certain conditions.[128] The records and proceedings of a probate court in another state or country are noticed.[129] The deposition of a witness out of the Philippine Islands may be taken.[130] Instruments may be acknowledged and authenticated without the Islands.[131]

Again, the same article of the Constitution declaring that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," is not in force in the Philippines. Nevertheless, many interpretative principles which have grown up around the clause undoubtedly have weight here.[132] As a local example, other jurisdictions in the United States are recognized in the privileges accorded those admitted to certain professions, as law. The rights and duties of

[124] Sec. 905, U. S. Revised Statutes, or sec. 1519, U. S. Compiled Statutes (1913).

[125] Code of Civil Procedure, sec. 275.

[126] *Id.* secs. 299, 300, 301.

[127] *Id.* secs. 304, 305.

[128] *Id.* secs. 309-312.

[129] *Id.* sec. 719.

[130] *Id.* secs. 356 *et seq.*

[131] Act. 2103.

[132] See Corfield *v.* Coryell (1823) 4 Wash. C. C. 371, Fed. Cas. No. 3,230.

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aliens who are in the Philippines are considered in the next section. As to the rights and privileges of a foreign company, association, or corporation, a most important doctrine frequently declared by the United States Supreme Court is that "The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states,—a comity which is never extended where the existence of the corporation or the exercise of its powers is prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest. The whole matter rests in their discretion." [133] A foreign company, association, or corporation should be taken to mean a company, association, or corporation formed, organized, or existing under any laws other than those of the Philippine Islands.[134] Many requirements of the Philippine laws are made identical for the domestic and foreign corporation. In addition, special restrictions are imposed on the foreign corporation.[135]

[133] Paul *v.* Virginia (1869) 8 Wall. 168, 181, 19 L. Ed. 357. See also Horn Silver Mining Co. *v.* New York (1892) 143 U. S. 305, 36 L. Ed. 164.

[134] See Act 1459, The Corporation Law, sec. 68; Act 2437, The Insurance Act, sec. 170, etc.

[135] See Act 1459, The Corporation Law, secs. 68-73, as amended; Act 926, The Public Land Law, secs. 10, 12; Act 2437, The Insurance Act, secs. 176-179, etc.

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Finally, the portion of this article of the Constitution declaring that "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime," is not in force in the Philippines. However, extradition [136] from the Philippines to the United States or a foreign country and from the United States or a foreign country to the Philippines is provided for in two Acts of Congress of February 9, 1903, and February 6, 1905, making certain sections of the Revised Statutes of the United States "so far as applicable" apply to the Philippine Islands. The exact procedure, too complicated to be here outlined, can be gleaned by those interested in a compilation of certain sections of the Revised and Compiled Statutes applicable in the Philippines, found in a note.[137] Suffice it to say that under the Act

[136] "The term *extradition* is applied to the legal process by which one sovereign state, in compliance with a formal demand, surrenders to another state, for trial, the person of a criminal who has sought refuge within its territory." Davis, Elements of International Law, 3d Ed., p. 173; I Moore on Extradition, sec. 1.

[137] "No. 1675. (Act Feb. 9, 1903, c. 529, No. 1.) Offenders against the United States, how arrested and removed to or from the Philippine Islands.

"The provisions of section ten hundred and fourteen of the Revised Statutes, so far as applicable, shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and imprisoned, or bailed, as the case may be, pending the issuance of a

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of Congress of February 9, 1903, there is provided a process for the arrest and removal of offenders against the United States to or from the Philippine Islands. Judges of First Instance in the Philippines are authorized

warrant for his removal to the United States, which warrant it shall be the duty of a judge of the Court of First Instance seasonably to issue, and of the officer or agent of the United States designated for the purpose to execute. Such officer or agent, when engaged in executing such warrant without the Philippine Islands, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safe-keeping and the execution of the warrant. (32 Stat. 806.)

"No. 1674. (R. S. No. 1014.) Offenders against the United States, how arrested and removed for trial.

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court (U. S. Commissioner) to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshall to execute, a warrant for his removal to the district where the trial is to be had.

"No. 10128. (Act Feb. 9, 1903, c. 529, No. 2.) Fugitives from justice of Philippine Islands.

"The provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine of the Revised Statutes, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof. (32 Stat. 807.)

"No. 10126. (R. S. No. 5278.) Fugitives from justice of a State or Territory.

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to issue warrants for the arrest of these fugitives from justice. The Governor-General by producing proper affidavit is authorized to make demand on the executive of any State or Territory of the United States for any per-

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

"No. 10127. (R. S. No. 5279.) Penalty for resisting agent, etc.

"Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

"No. 10124. (Act Feb. 6, 1905, c. 454, No. 1.) Delivery of fugitives from justice, as between foreign country and Philippine Islands.

"The provisions of section fifty-two hundred and seventy, fifty-two hundred and seventy-one, fifty-two hundred and seventy-two, fifty-two hundred and seventy-three, fifty-two hundred and seventy-four, fifty-two hundred and seventy-five, fifty-two hundred and seventy-six, and fifty-two hundred and seventy-seven of the Revised Statutes (as amended by the Act approved August third, eighteen hundred and eighty-two), so far as applicable, shall apply to the Philippine Islands for the arrest and removal therefrom of any

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son who is a fugitive from justice, or contrariwise, to cause a fugitive in the Philippines to be arrested and delivered to the agent of any State or Territory of the United States. The Act of Congress of February 6,

fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by the treaty between the United States and such foreign nation, and for the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the Philippine Islands. Such fugitive from justice of a foreign country may, upon warrant duly issued by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and brought before such judge or magistrate, who shall proceed in the matter in accordance with the provisions of the Revised Statutes hereby made applicable to the Philippine Islands: *Provided,* That for the purposes of this section the order or warrant for delivery of a person committed for extradition prescribed by section fifty-two hundred and seventy-two of the Revised Statutes shall be issued by the Governor of the Philippine Islands under his hand and seal of office, and not by the Secretary of State. (33 Stat. 698.)

"No. 10125. (Act Feb. 6, 1905, c. 454, No. 2.) Allowing prisoners to escape punishable.

"The provisions of sections fifty-four hundred and nine and fifty-four hundred and ten of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States under an Act entitled 'An Act to provide for the removal of person accused of crime to and from the Philippine Islands for trial,' approved February ninth, nineteen hundred and three, or to foreign countries under the provisions of this Act. (33 Stat. 698.)

"No. 10110. (R. S. No. 5270, as amended, Act June 6, 1900, c. 793.) Fugitives from the justice of a foreign country, or a country under the control of the United States.

"Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made, under oath, charging any person found within the limits of any State, district or Territory, with having

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1905, provides a process by which fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign na-

committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made: *Provided,* That whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses, namely: Murder and assault with intent to commit murder; counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering, and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries; larceny and embezzlement of an amount not less than one hundred dollars in value; robbery; burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein; and the act of breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein; the act of entering, or of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape, arson, piracy by the law of nations; murder, as-

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tion may be arrested and removed from the Philippine Islands, or a foreign government may, in similar cases, cause the delivery of a person accused of crime committed within the jurisdiction of the Philippine Islands. The

sault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, any Territory thereof or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense is committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-five of this title, so far as applicable, shall govern proceedings authorized by this proviso: *Provided further,* That such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged: *And provided further,* That no return or surrender shall be made of any person charged with the commission of any offense of a political nature. If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

"No. 10111. (R. S. No. 5271.) Evidence on the hearing.

"In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for

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order or warrant for the delivery of the person committed for extradition is issued in such cases not by the Secretary of State as usual, but by the Governor-General of the Philippine Islands under his hand and seal of office.

similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section.

"No. 10112. (Act Aug. 3, 1882, c. 378, No. 1.) Place and character of the hearing.

"All hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public. (22 Stat. 215.)

"No. 10113. (Act Aug. 3, 1882, c. 378, No. 2.) Fees of commissioners.

"This section may be regarded as superseded by Act May 28, 1896, c. 252, No. 21, ante, No. 1451.

"No. 10114. (Act. Aug. 3, 1882, c. 378, No. 3.) Witnesses for indigent defendants.

"No. 10115. (Act. Aug. 3, 1882, c. 378, No. 4.) Payment of fees and costs.

"No. 10116. (Act Aug. 3, 1882, c. 378, No. 5.) Evidence on the hearing.

"No. 10117. (Act June 28, 1902, c. 1301, No. 1.) Fees and costs in extradition cases, how paid; duties of Attorney-General and Secretary of State.

"No. 10118. (R. S. No. 5272.) Surrender of the fugitive.

"It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of

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The lack of extradition treaties between the United States and certain countries or possessions of certain countries and failures in connection with attempts at extradition of fugitives fleeing from the Philippines to Hongkong leave extradition matters in the Philippines in a rather

any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape.

"No. 10119. (R. S. No. 5273.) Time allowed for extradition.

"Whenever any person who is committed under this Title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

"No. 10120. (R. S. No. 5274.) Continuance of provisions limited.

"The provisions of this Title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

"No. 10121. (R. S. No. 5275.) Protection of the accused.

"Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

"No. 10122. (R. S. No. 5276.) Powers of agent receiving offenders delivered by a foreign government.

"Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person

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unsatisfactory state. Possibly this result is partially due to the fact that extradition is necessarily regarded as a national act.[188]

Filipinos going to other states may expect to be somewhat in the same position as foreigners entering the

accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

"No. 10123. (R. S. No. 5277.) Penalty for opposing agent, etc.

"Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

"No. 10308. (Crim. Code, No. 138; R. S. No. 5409.) Allowing prisoner to escape.

"No. 10309. (Crim. Code, No. 139; R. S. No. 5410.) Application of provisions."

Secs. are as appearing in the U. S. Compiled Statutes of 1913. See generally IV Moore, International Law Digest, Ch. XIV, and Willoughby on the Constitution, Vol. I, Ch. XIV.

[188] See U. S. *v.* Rauscher (1886) 119 U. S. 407, 414, 30 L. Ed. 425 in which the Supreme Court said: "There can be little doubt of the soundness of the opinion of Chief Justice Taney, that the power exercised by the Governor of Vermont is a part of the foreign intercourse of this country which has undoubtedly been conferred upon the Federal Government; and that it is clearly included in the treaty-making power and corresponding power of appointing and receiving ambassadors and other public ministers. There is no necessity for the States to enter upon the relations with foreign nations which are necessarily implied in the extradition of fugitives from justice found within the limits of the State, as there is none why they should in their own name make demand upon foreign nations for the surrender of such fugitives. At this time of day, and after the repeated examinations which have been made by this court into the powers of the Federal Government to deal with all such international questions exclusively, it can hardly be admitted that, even in the absence of treaties or acts

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Philippines.[139] Passports are usually essential when travelling abroad except in the United States. They are issued by the Governor-General to citizens of the United States and to citizens of the Philippine Islands who owe allegiance to the United States.[140]

§ 124. Aliens.[141]—Every sovereignty, for social, economic, or political reasons, as protection to public

of Congress on the subject, the extradition of a fugitive from justice can become the subject of negotiations between a State of this Union and a foreign government." The extradition treaty between the United States and Mexico, however, permits requests for extradition to be made by the governors, or other civil authorities, of the frontier states, or, in case the civil authority is suspended, then through the military officer in chief command of such state or territory. Davis, Elements of International Law, 3d Ed., pp. 174, 175.

[139] But Frederick R. Coudert, Certainty and Justice, p. 252, claims that unlike aliens, Filipinos would not have access to the courts of the United States. There is, however, contrary judicial practice and Filipinos *have* sued in State and Federal Courts.

[140] See Rules *re* Passports in the United States, Sept. 12, 1903; Executive Order No. 32, s. 1904, Vol. 3, Public Laws, p. 520, and generally III Moore, International Law Digest, Ch. XII. "Section 4076 of the Revised Statutes of the United States, based on the act of August 18, 1856, provided that no passport should be 'granted or issued to or verified for any other persons than citizens of the United States.' As we have seen, the inhabitants of Porto Rico were, by the act of April 12, 1900, *supra*, declared to be 'citizens of Porto Rico;' while the people of the Philippines were, by the act of July 1, 1902, declared to be 'citizens of the Philippine Islands;' and passports were issued to them accordingly. In order to cover, generally, the case of the inhabitants of the insular possessions of the United States, who, while they had not been declared to be citizens, were declared to be entitled to the protection of the United States Congress, by the act of June 14, 1902, amended section 4076 so as to read: 'No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States.' Act of June 14, 1902, 32 Stat., part 1, p. 386." III Moore, International Law Digest, pp 877, 878.

[141] "The term *alien* is applied to any person within the territory of a state, at any time, who is not a citizen or subject of that state,

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safety or public order and as a police measure, has the inherent and absolute right essential to self-preservation to refuse admission to aliens, or to admit them upon such conditions as it may see fit to prescribe, or to expel or deport them. Not stopping to quote from a long array of authorities (some to be found cited in a note) in support of this maxim of the public law, we allude only to the discussion of the rule and its reason by the Chief Justice of the Supreme Court of the Philippines in the following well-chosen language:

"Unquestionably every State has a fundamental right to its existence and development, as also to the integrity of its territory and the exclusive and peaceable possession of its dominions which it may guard and defend by all possible means against any attack. . . . We believe, it is a doctrine generally professed by virtue of the fundamental right to which we have referred that under no aspect of this case does the right of intercourse give rise to any obligation on the part of the State to admit foreigners under all circumstances into its territory. The international community, as Martens says, leaves States at liberty to fix the conditions under which foreigners should be allowed to enter their territory. These conditions may be more or less convenient to foreigners, but they are a legitimate manifestation of territorial power and not contrary to law. In the same way a State possesses the right to expel from its territory any foreigner who does not conform to the provisions of the local law. (Martens's Treatise on International Law, Vol. I,

either by birth or naturalization. These foreigners or strangers are susceptible of classification into (a) *Aliens,* or *Aliens Proper,* including all those persons who are sojourning temporarily within the state, or who are passing through its territory. (b) *Domiciled Strangers,* including all those persons who have acquired a legal domicile at some place within its territorial jurisdiction." Davis, Elements of International Law, 3d Ed., p. 151.

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p. 381.) Superior to the law which protects personal liberty and the agreements which exist between nations for their own interest and for the benefit of their respective subjects is the supreme and fundamental right of each State to self-preservation and the integrity of its dominion and its sovereignty." [142]

[142] *In Re* Patterson (1902) 1 Phil. 93, 95. "It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." Gray J. in Nishimura Ekiu *v.* U. S. (1892) 142 U. S. 651, 659, 35 L. Ed. 1146. "The right of a nation to expel or deport foreigners, who have not been naturalized or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country." Gray J. in Fong Yue Ting *v.* U. S. (1893) 149 U. S. 698, 707, 37 L. Ed. 905. "Every nation has the right to refuse to admit a foreigner into the country when he can not enter without putting the nation in evident danger or doing it manifest injury. What it (the nation) owes to itself, the care of its own safety, gives to it this right; and in virtue of its national liberty, it belongs to the nation to judge whether its circumstances will or will not justify the admission of the foreigner. Thus, also, it has a right to send them elsewhere if it has just cause to fear that they will corrupt the manners of the citizen; that they will create religious disturbances or occasion any other disorder contrary to the public safety. In a word, it has a right, and is even obliged in this respect, to follow the rules which prudence dictates. (Vattel's Law of Nations, Book I, chap. 19, secs. 230, 231.) A state has the right to expel from its territory aliens, individually or collectively, unless treaty provisions stand in the way. . . . In ancient times, collective expulsion was much practised. In modern times it has been resorted to only in case of war. Some writers have essayed to enumerate the legitimate causes of expulsion. The effort is useless. The reasons may be summed up and condensed in a single word: *The public interest of the state.*" Bonfils, *Manuel du Droit Int. Public,* art. 442; Darut, *De l'Expulsion des Etrangers,* Aix, 1902. See generally IV Moore, International Law Digest, Ch. XIII; Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, quoting authorities.

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Immigration laws.

The United States as an independent nation can exclude foreigners from its territory or regulate their admission.[143] Orders by the Military Governor and regulations by the Secretary of War first controlled immigration for the Philippines.[144] Congress later by Act of March 3, 1903, and now principally by Act of February 20, 1907, provided for the regulation and restriction of immigration to the Islands and extended the Chinese Exclusion Acts thereto.[145] The Philippine Legislature has the power, with the approval of the President, to pass acts affecting immigration.

The immigration laws of the United States in force in the Philippine Islands and the Chinese Exclusion Acts are administered by the Customs authorities.[146] The procedure for the enforcement of both bodies of laws is the same.[147] The Insular Collector of Customs is the chief immigration officer for the Islands. Boards of Special

[143] See the Chinese Exclusion Case (1889) 130 U. S. 581, 32 L. Ed. 1068 and Fong Yue Ting *v.* U. S. (1893) 149 U. S. 698, 37 L. Ed. 905.

[144] Described in IV Moore, International Law Digest, pp. 234 *et seq;* Bouve, Exclusion and Expulsion of Aliens from the United States, pp. 111-113; and *In Re* Allen (1903) 2 Phil. 630.

[145] See U. S. Compiled Statutes (1913), Title XXIX, for present immigration laws. Named in Brady, Jurisdiction of the Customs Board of Special Inquiry, III Philippine Law Review, Oct., 1914, p. 628. Described in Bouve, *id,* Ch. II.

[146] Act of Congress of March 18, 1904, sec. 1; Act of Congress of Feb. 6, 1905, sec. 6; Act 355, secs. 3, 7, 19, as amended; Act 702, secs. 1, 2; Note of Civil Governor Taft to Act of Congress of March 3, 1902, 2 Public Laws, p. 585; *In Re* Allen (1903) 2 Phil. 630; Ngo-Ti *v.* Shuster (1907) 7 Phil. 355; Uy Kai Hu *v.* McCoy (1913) 24 Phil. 151; Chieng Ah Sui *v.* McCoy (1915) 239 U. S. 139, and many other cases.

[147] Uy Kai Hu *v.* McCoy (1913) *id.,* citing Chinese Immigration Circular No. 186 promulgated under Act 355, sec. 19, and the Act of Congress of Feb. 6, 1905.

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Inquiry consisting of three officials appointed from time to time by the Insular Collector are designated to pass upon the question of the right of aliens to enter the Philippine Islands in the first instance.[148] The Board of Special Inquiry is designed by law to be a deliberative body. These boards have "authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported." While a technical judicial hearing such as is granted in an ordinary action at law is not required, nevertheless there must be the substance of a hearing.[149] Appeal can be taken by the alien or a dissenting member to the Insular Collector of Customs.[150] Administrative remedies must be first exhausted before resort to the courts can be had.[151] Since the administration of the immigration laws belongs peculiarly to the executive branch of the Government, repeated decisions of the Supreme Court of the United States and of the Supreme Court of the Philippines have decided that the judicial branch will not interfere, unless there has been an abuse of authority or a violation of the law. In other words, the decision of the appropriate administrative officer if adverse to the admission of an alien or to the effect that he is not a citizen is final when no abuse of authority by said officer is alleged and shown.[152] The Su-

[148] See Act of Congress of Feb. 20, 1907, secs. 10, 24, 25.

[149] Edwards *v.* McCoy (1912) 22 Phil. 598. See also the late cases of Amado Seng *v.* Insular Collector of Customs (1915) XIV O. G. 52; Tin Lio *v.* Collector of Customs (1915) XIV O. G. 293; Chiang Ah Sui *v.* McCoy (1915) 239 U. S. 139.

[150] Act of Congress of Feb. 20, 1907, sec. 25 in connection with Act of Congress of Feb. 6, 1905, sec. 6; Lorenzo *v.* McCoy (1910) 15 Phil. 559.

[151] Jao Igco *v.* Shuster (1908) 10 Phil. 448, citing decisions of the U. S. Supreme Court.

[152] Act of Congress of Feb. 20, 1907, sec. 25; U. S. *v.* Ju-Toy (1905) 198 U. S. 253, 49 L. Ed. 1040; Pearson *v.* Williams (1906) 202 U. S. 281, 50 L. Ed. 1029; *In Re* Patterson (1902) 1 Phil. 93;

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preme Court has held that it will not interfere for the purpose of modifying or reversing the conclusions of the Collector of Customs in immigration cases when his conclusions are based on *some* evidence justifying them, and when the parties have been given a fair, full, and free hearing.[153] The burden is always upon the alien seeking to land to show that he has such right.[154]

Chinese exclusion.

Treaties between the United States and China in conjunction with supplemental American legislation have resulted in a practically absolute exclusion of Chinese laborers from the United States.[155]

As incident to the military administration of the Philippines but against the protest of the Chinese Minister at Washington, the Commanding General by order of September 26, 1898, prohibited the coming of Chinese to the Philippines, with the exception of those classes permitted to enter the United States and laborers formerly residents of Manila and temporarily absent therefrom. By an-

Ngo-Ti *v.* Shuster (1907) 7 Phil. 355; Lo Po *v.* McCoy (1907) 8 Phil. 343; Young Wampo *v.* Insular Collector of Customs (1913) 24 Phil. 431; Que Quay *v.* Collector of Customs (1916) XIV O. G. 322, etc.; Bouve, *id.*, Ch. IV.

[153] Loo Sing *v.* Collector of Customs (1914) 27 Phil. 491. An abuse of authority exists: (*a*) When a person has been denied admission into the territory of the United States who does not belong to any of the excluded classes, (*b*) When a person seeking admission has not been given a full, fair, and free hearing, (*c*) When there is no proof at all presented against the right of the applicant seeking admission. Ang Eng Chong *v.* Collector of Customs (1912) 23 Phil. 614.

[154] Tan Chin Hin *v.* Collector of Customs (1914) 27 Phil. 521; Gñilo *v.* Collector of Customs (1915) XIV O. G. 58.

[155] See generally IV Moore, International Law Digest, pp. 187 *et seq;* U. S. Compiled Statutes (1913), secs. 4290 *et seq;* Bouve, Exclusion and Expulsion of Aliens from the United States, pp. 85 *et seq* and App. B.

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other order issued April 1, 1899, only such Chinese as were in good health and had been residents of any of the provinces of the Philippine Islands were permitted to land at Manila, Iloilo, and Cebu, the only three open ports of the Archipelago.[156] Section 1 of the Act of Congress of April 29, 1902, as amended by the Act of April 27, 1904, made applicable to the Philippine Islands the laws relating to the exclusion of Chinese and their residence in the United States, including sections 5, 6, 7, 8, 9, 10, 11, 13, and 14 of the Act of September 13, 1888, continued in force.[157] It also prohibited the emigration of Chinese laborers not citizens of the United States from the Philippines to the mainland territory. The transit of Chinese laborers from one island in the Philippines to another was permitted. The same law empowered the Secretary of Labor to make rules and regulations to execute the provisions of the Chinese Exclusion Law and to appoint agents for the execution of the Act.[158] Rule 38 of

[156] IV Moore *id.* pp. 234 *et seq;* Foreign Relations 1899. "On April 14, 1899, by Circular No. 13, Division of Customs and Insular Affairs, the Secretary of War declared the laws and regulations governing immigration to the United States to be in effect in the territory under the government of the military forces of the United States, and directed collectors of customs to enforce said laws and regulations until the establishment of immigration stations in said territory, and that said circular was published, for the information of all affected thereby, by the military governor of the Philippine Islands on May 30, 1899, in Circular No. 6, series of 1899." U. S. *v.* Chan Sam (1910) 17 Phil. 448, 450.

[157] Sec. 4337 U. S. Compiled Statutes (1913). The laws previously enforced which were re-enacted, extended, and continued by this section are set forth in secs. 4290-4336 *id.*

[158] Sec. 4338 U. S. Compiled Statutes (1913). This section as originally enacted was amended by resolution of April 28, 1904, No. 34, by striking out the words "Secretary of the Treasury" used therein and inserting in lieu thereof the words "Secretary of Commerce and Labor." The words "Commerce and" were superseded by the creation of the Department of Labor with a Secretary of Labor as the head thereof.

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the regulations of the United States, approved February 5, 1906, provided that Chinese persons of the exempt class who are citizens or subjects of the Insular territory of the United States and who wish to go from one Insular territory to another Insular territory in the United States, or from such Insular territory to the mainland territory of the United States, must obtain from an officer designated for the purpose by the Chief Executive of the Insular territories, respectively, a permission in a form analogous to the certificate prescribed by section 6 of the Act of Congress of July 5, 1884.[159] The issuance of such certificates in the Philippines is regulated by an Executive Order of the Governor-General of September 23, 1904. The law further provides for certificates of residence in Insular territory and authorizes the Philippine Commission to make regulations for the enforcement of the Act in the Philippine Islands.[160] The Philippine Commission on March 27, 1903, passed Act 702, the Chinese Registration Act.[161]

Our Supreme Court, through Mr. Justice Carson, after citing or quoting from any of the laws here mentioned, says that: "The manifest purpose and object of all this legislation was to make it unlawful for any Chinese laborer to enter the Philippine Islands or to remain there in the event that he does in fact unlawfully gain an entry; and to subject such persons to deportation, without unnecessarily molesting those Chinese persons, including laborers, who were lawfully in the Philippine Islands at the time when the Chinese Immigration Laws of the United States were extended to the Islands, and

[159] IV Moore *id*, pp. 236, 237.

[160] Sec. 4339 U. S. Compiled Statutes (1913).

[161] Described in Bouve, pp. 117 *et seq.* Subsequent Acts of the Philippine Commission extended the period for registration to April 29, 1904.

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whose right to be and remain there is not questioned." [162] The same Court, in addition to doctrines concerning immigration also applicable to Chinese exclusion, has established, among others, the following fundamental principles: Chinese persons and persons of Chinese descent must be examined by the customs officers as to their right to admission under the provisions of the general immigration Act as well as under the provisions of the laws relating to Chinese exclusion.[163] The complaint for the deportation of Chinese must be presented by officers of the Philippine Government bearing the same relation to said Government which the officers mentioned in the Act of Congress of March 3, 1901, bear to the United States Government.[164] Proceedings brought under the Chinese Exclusion Act for the deportation of a Chinese person are civil and not criminal.[165] Under the provisions of Act 702, every Chinese person found in the Philippine Islands without the certificate of residence required by the law is presumed to be a Chinese laborer, in the absence of satisfactory proof to the contrary, and upon him rests the burden of proving his right to remain in the Islands.[166]

[162] U. S. *v.* Chan Sam (1910) 17 Phil. 448, 454.

[163] Uy Kai Hu *v.* McCoy (1913) 24 Phil. 151.

[164] U. S. *v.* Lee Chiao (1912) 23 Phil. 543, 547.

[165] *In Re* Lam Jung Sing, 150 Fed. 608; U. S. *v.* Sy Quiat (1909) 12 Phil. 676, 678. The arrest and proceedings necessary to determine the right of Chinese persons to remain in this country under the provisions of Act 702 are not trials for the commission of criminal offenses. U. S. *v.* Yap Kin Co. (1912) 22 Phil. 340. Deportation proceedings are not criminal in their nature, so as to give to the defendant the rights and privileges of one accused of the commission of a crime. U. S. *v.* Go-Siaco (1909) 12 Phil. 490; U. S. *v.* Hung Chang, 134 Fed. 19, and cases there cited; Nishimura Ekiu *v.* U. S. (1892) 142 U. S. 651, 35 L. Ed. 1146; Fong Yue Ting *v.* U. S. (1893) 149 U. S. 698, 37 L. Ed. 905; The Japanese Immigrant Case (1903) 189 U. S. 86, 47 L. Ed. 721; U. S. *v.* Tan Yak (1913) 25 Phil. 116.

[166] U. S. *v.* Sy Quiat (1909) 12 Phil. 676, citing authorities; U. S. *v.* Lim Co. (1909) 12 Phil. 703.

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The status of a Chinaman and his right to enter these Islands are to be determined as of the time when he presents himself for entry, and not by events which subsequently transpired.[167]

Expulsion.

The Government of the Philippine Islands, as said by Mr. Justice Johnson of its Supreme Court in the sensational case of Forbes *v.* Chuoco Tiaco, "may prevent the entrance into or eliminate from its borders all such aliens whose presence is found to be detrimental or injurious to its public interest, peace, and domestic tranquillity." [168] In the same case on appeal to the United States Supreme Court, Mr. Justice Holmes expressed the opinion for the Court that the Philippine Government had the right of deportation "as an incident of the self-determination, however limited, given to it by the United States." [169] This power belongs to the political department of the Government—in the Philippine Islands, to the Governor-General.[170] Act 2113 of the Philippine Legislature (Adm. Code, sec. 83), regulating the authority of the Chief Executive to expel foreigners, provides for a prior investigation and hearing.[171] The penal laws also give the courts the power to order deportation in certain cases.[172]

[167] Juan Co. *v.* Rafferty (1909) 14 Phil. 235.

[168] (1910) 16 Phil. 534 at pp. 559, 560,—italics those of court. See also Arellano, C. J., *In Re* Patterson (1902) 1 Phil. 93.

[169] Tiaco *v.* Forbes (1913) 228 U. S. 549, 557, 57 L. Ed. 960.

[170] Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534 at pp. 568 *et seq; In Re* Patterson (1902) 1 Phil. 93.

[171] See Chan Yick Sam *v.* Prosecuting Attorney of the City of Manila (1915) XIII O. G. 2209.

[172] See "Extrañamiento," Penal Code; Act 899, vagrants; Act 2381, The Opium Law, sec. 5, etc. Act 2213 also authorizes the Insular Collector of Customs to deport stowaways.

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Rights and privileges.

Generally speaking, all persons, unless because of exceptional circumstances as when necessary to limit the privilege for reasons of public policy, are permitted to enter a foreign country for purposes of travel, trade, or sojourn. They then become subject to the provisions of the local law of the State in which visiting or domiciled, and are amenable for any infraction of the law.[173] The reasons for this last rule are stated by Mr. Chief Justice Marshall as follows:

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently,

[173] See *In Re* Patterson (1902) 1 Phil. 93. Webster, when Secretary of State, in his report on Thrasher's Case in 1851, declared: "Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance, it is well known, that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulation." Webster's Works, VI, 526, approved by the U. S. Supreme Court in U. S. *v.* Carlisle (1873) 16 Wall. 147, 21 L. Ed. 426; U. S. *v.* Wong Kim Ark (1898) 169 U. S. 649, 42 L. Ed. 890.

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there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption." [174]

On the other hand, aliens in the United States have access to the courts, are entitled to the equal protection of the laws, and can not be deprived of life, liberty, or property without due process of law.[175] A statute, arbitrarily forbidding foreigners to engage in ordinary kinds of business to earn their living, would be unconstitutional and void.[176] But citizens may be preferred to non-citizens without violating constitutional guaranties.

The Philippine Government has jurisdiction over all persons within its boundaries, except the United States Army and Navy and foreign consuls, and even over these in many cases. By the use in the Philippine statutes of such phrases as "resident of the Philippine Islands, not a subject or citizen of any foreign government" or "citizen of the Philippine Islands or of the United States," Philippine and American citizens are placed on equal terms. The Spanish Codes contain articles pertaining to the rights of foreigners, although just how many of these provisions are still in force it is difficult to say. At least foreigners are only excluded from a few privileges such as the right to hold office, to procure licenses in the Philippine coast-wise trade, to take up homesteads, etc. If a foreigner has capacity to engage in trade in his own

[174] The Exchange (1812) 7 Cranch 117, 144, 3 L. Ed. 287. See also U. S. *v.* Wong Kim Ark *id.*

[175] Yick Wo *v.* Hopkins (1886) 118 U. S. 356, 30 L. Ed. 220; Lem-Moon Sing *v.* U. S. (1895) 158 U. S. 538, 39 L. Ed. 1082. See generally Coudert, Certainty and Justice, Ch. IX "Aliens and the Progress of the Law."

[176] Commonwealth *v.* Hana (1907) 195 Mass. 262, 11 L. R. A. (N. S.) 799.

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country, he may engage in commerce in the Philippine Islands.[177] The Attorney-General of the United States has said that:

"A foreign corporation may freely engage in industrial pursuits in the Philippines, provided it obtain a license for that purpose from the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau. . . .

"In general, a (foreign) corporation would enjoy the same rights and advantages in the Philippines as an American corporation. . . .

"The only provisions of the Philippine laws which make any distinction between corporations organized under the laws of the United States and (foreign) corporations are: (1) Sections 21 and 35 of the organic act of July 1, 1902, which confine the exploration of occupation of mineral lands to citizens of the United States or of the Philippine Islands; and (2) section 979 of the Compiled Laws of 1907, which makes the same restriction as to the purchase of nonmineral agricultural public land in the Philippine Islands." [178]

The Treaty of Paris prescribed specifically the privileges of Spaniards remaining in the Philippines. The Supreme Court has, however, held that since the ratification of the treaty, the rights of Spanish subjects residents of the Philippines are merely identical with those of other resident foreigners.[179]

§ 125. Citizenship.—We are concerned with "citizens of the United States" and "citizens of the Philippine Islands."

[177] 5 Op. Atty. Gen. P. I. 639, citing authorities.

[178] 29 Op. Atty. Gen. U. S. 435. See also Interstate Comity, sec. 123 *supra.*

[179] *In Re* Bosque (1902) 1 Phil. 88; (1908) 209 U. S. 91, 52 L. Ed. 698.

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Citizens of the United States.

American citizenship, according to the Fourteenth Amendment to the Constitution, can be acquired either by birth in the United States or by naturalization therein. Citizenship by birth may exist by reason of birth in a particular place—*jus soli,* or by reason of blood—*jus sanguinis.* The doctrine of *jus soli* predominates in the United States by virtue of the provisions of its Constitution and laws.[180] Citizenship by naturalization can be acquired by treaties or in pursuance of laws of Congress. The Treaty of Paris transferring sovereignty over the Philippines from Spain to the United States did not grant collective naturalization to the inhabitants of the Islands.

Section 30 of the United States Naturalization Act of June 29, 1906 (Section 4, 366 U. S. Compiled Statutes, 1913) provides a method by which persons who owe permanent allegiance to the United States (Filipinos) may be naturalized. The applicable provisions of the naturalization laws [181] authorize the admission to citizen-

[180] The doctrine of the *jus soli* "is that any person born within the territory of a given state, and over which the state has established government, owes direct and immediate, or better, primary and natural, allegiance to that state, no matter whether his parents be citizens or subjects of, or aliens in, the said state." Burgess, Political Science and Constitutional Law, Vol. I, p. 223; Munroe Smith, Nationality, in Cyclopaedia of Political Science (Ed. Lalor) Vol. 2, p. 941 ff. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Fourteenth Amendment to the Constitution of the United States. "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States." Rev. Stats., No. 1992; sec. 1, Civil Rights Act, April 9, 1866, 14 Stat. 27; III Moore, International Law Digest, pp. 277 *et seq.* See U. S. *v.* Wong Kim Ark (1898) 169 U. S. 649, 42 L. Ed. 891; Roa *v.* Collector of Customs (1912) 23 Phil. 315, 322 *et seq;* and Van Dyne, Citizenship of the United States, Part I.

[181] See U. S. Compiled Statutes (1913) Title XIX and Van Dyne on Naturalization for present U. S. Naturalization Laws.

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ship of such persons, who become residents of any State or organized territory of the United States with the following modifications: "The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law." "The practical result of this section," said Judge Paul Charlton, then Law Officer of the Bureau of Insular Affairs, in an address before the American Academy of Political and Social Science, "is that an insular inhabitant, possessing the other qualifications of an alien, who has resided in any of the islands for a period of three years or more, may come to the United States, and by declaration that he desires to become a citizen of the United States, and to permanently reside within the territory under its jurisdiction, may receive his first papers, and two years thereafter, upon proper proof to a court of requisite jurisdiction that he has complied with the provisions of the naturalization law, he may become a full citizen of the United States, and may thereafter choose his residence with the same freedom as any other citizen." [182] The applicant must consequently, among other requisites, not be physically incapacitated, be able to speak the English language, declare his intention at least two years prior to his admission, and become for a time a resident of a State or an organized territory.[183] Naturalization could not be conferred by any court at

[182] Vol. 30, July, 1907, p. 109. Also recently judicially so decided by the Supreme Court of the District of Columbia and by the U. S. District Court for Hawaii.

[183] Act of Congress June 29, 1906, sec. 8—sec. 4364 U. S. Compiled Statutes (1913); 38 Cyc. 197; XXVII Op. Atty. Gen. U. S. 12.

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present existing in the Philippine Islands; or, directly stated, naturalization can only be conferred by a court of or in the United States.[184] The citizenship of the wife will then follow that of the husband [185] and of the child that of the parents.[186]

The foregoing principles, of course, include Filipinos owing allegiance to the United States and permit of their naturalization as citizens of the United States.[187]

Citizens of the Philippine Islands.

Philippine citizenship is covered by article IX of the Treaty of Paris, section 4 of the act of Congress of July 1, 1902, as amended by Act of March 23, 1912, and as superseded by Act of Congress of August 16, 1916.

The Treaty of Paris gave to Spanish subjects resident in the Philippines the option of removing or remaining in the Islands. If they left, they retained their Spanish nationality; if they remained, they adopted the nationality of the Philippines, unless within one year from the date of the exchange of ratifications (extended by Protocol of Agreement between Spain and the United States for an additional six months from April 11, 1900) they declared before a court of record their intention to preserve allegiance to Spain.[188] The United States Supreme Court

[184] Act of Congress June 29, 1906, sec. 3—sec. 4351 U. S. Compiled Statutes (1913); I Op. Atty. Gen. Porto Rico 179.

[185] Rodriguez *v.* Vivoni (1902) 1 Porto Rico Fed. 493; Martinez de Hernandez *v.* Casañas (1907) 2 Porto Rico Fed. 519.

[186] Battistini *v.* Belaval (1903) 1 Porto Rico Fed. 213; Roa *v.* Collector of Customs (1912) 23 Phil. 315; Boyd *v.* Thayer (1892) 143 U. S. 135, 36 L. Ed. 103; Van Dyne on Naturalization, Ch. II; sec. 2172 U. S. Rev. Stat.—sec. 4367 U. S. Compiled Statutes (1913).

[187] Previous citations, especially XXVII Op. Atty. Gen. U. S. 12.

[188] The first paragraph of article IX of the Treaty of Paris reads: "Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove there-

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in the controlling case of Bosque *v.* United States decided that the absence of a Spanish subject from the Philippine Islands during the entire period allowed by the treaty of peace with Spain for making a declaration of his intention to preserve allegiance to the Crown of Spain prevents the loss of his Spanish nationality by reason of his failure to make such declaration.[189] The Attorney-General of the Philippines following the Bosque case was of the opinión that, in order that a Spaniard might acquire the status of a citizen of the Philippine Islands under the treaty of peace with Spain, it was necessary that he have a residence *de facto* in the Islands for the eighteen months following the ratification of the treaty.[190] The Supreme Court of the Philippines held that a child under parental

from, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside." The sole article of the Protocol of Agreement between Spain and the United States of March 29, 1900, reads: "The period fixed in Article IX of the Treaty of Peace between the United States and Spain, signed at Paris on the tenth day of December, 1898, during which Spanish subjects, natives of the Peninsula, may declare before a court of record their intention to retain their Spanish nationality, is extended as to the Philippine Islands for six months beginning April 11, 1900." For description of Protocol, see III Moore, International Law Digest, pp. 321, 322. G. O. No. 50 of the Military Governor of the Philippines of Oct. 27, 1899, provided a means for carrying out the provisions of article IX of the Treaty in the Philippines.

[189] 209 U. S. 91 (1908) appearing in 11 Phil. 812; Op. Supreme Court, P. I., same case found in 1 Phil. 88 (1902).

[190] 2 Op. Atty. Gen. P. I. 501.

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authority whose father did not take advantage of the right of declaration of Spanish citizenship, as provided by article IX of the Treaty of Paris, has ceased to be a Spaniard and has become a citizen of the Philippine Islands;[191] but the child would retain his Spanish nationality without the necessity of declaring such to be his intention, if he had no parents or guardian in the Philippines at the time the treaty was ratified.[192] Article IX of the Treaty of Paris does not refer to the citizenship of corporations.[193]

The Spanish Royal Decree of May 11, 1901, provided a means whereby Spanish subjects who had lost their Spanish citizenship, by reason of their failure to comply with the provisions of the Treaty of Paris, as extended, might regain their former status.[194] This Royal Decree was accepted by the War and State Departments of the United States as not violating the provisions of the Treaty of Paris, or infringing upon the rights of the United States.[195]

The last paragraph of article IX of the Treaty of Paris reading "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" left no such choice to the Filipino inhabitants of the Philippines. In the language of Mr. Chief Justice Arellano:

"The native subject could not evade the power of the

[191] Resolution of the Supreme Court, *In Re* Arnaiz (1906) 9 Phil. 705. See also Resolution of the Supreme Court, *In Re* Villapol (1908) 9 Phil. 706; and Vallecillo y Mandry *v.* Berhan Bus (1907) III Porto Rico Fed. 175.

[192] Rivera *v.* Pons (1908) IV Porto Rico Fed. 177.

[193] Martinez *v.* La Asociación de Señoras Damas del Santo Asilo de Ponce (1909) 213 U. S. 20, 53 L. Ed. 679.

[194] Quoted in III Moore, International Law Digest, pp. 323-327. See also 1 Op. Atty. Gen. P. I. 17.

[195] Magoon's Reports, p. 173. Nor could it vary the terms of the treaty. Calderon *v.* Fabian (1908) IV Porto Rico Fed. 152.

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new sovereign by withdrawing from the Islands, nor while continuing to reside therein make declaration of his intention to preserve the Spanish nationality enjoyed under the former sovereign. Neither the Government of the United States nor that of Spain can consider them as other than Filipino subjects. This is expressly stated by the Spanish Government in article 1 of its royal decree of May 11, 1901." [196]

In conformity with the provisions of the Treaty of Paris, Congress included in the Philippine Bill, section 4, providing "That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight." Act of Congress of March 23, 1912, re-enacted this section with the addition of a proviso reading as follows: "*Provided,* That the Philippine Legislature is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of other Insular possessions of the United States, and such other persons residing in the Philippine Islands who could become citizens of the United States under the laws of the United States, if residing therein." The Philippine Legislature has thus far

[196] *In Re* Bosque (1902) 1 Phil. 88, 90. To same effect Roa *v.* Collector of Customs (1912) 23 Phil. 315, at page 336 and 5 Op. Atty. Gen. P. I. 144, 151.

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failed to pass the necessary suppletory legislation. No method at present exists by means of which one could become a citizen of the Philippine Islands.[197]

The Supreme Court of the Philippines in the leading case of Roa *v.* Collector of Customs [198] held that if the admission of the petitioner as a citizen of the Philippine Islands is not in conflict with any provision of the Constitution, any Act of Congress, any decision of the Supreme Court of the United States, or the general policy of the United States as to citizenship, section 4 of the Philippine Bill must be construed, if possible, in his favor. Mr. Justice Trent, speaking for the court further said:

"Here (in section 4 of the Philippine Bill) Congress declared that all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th of April, 1899, and then resided in this country, and their children born subsequent thereto, shall be deemed and held to be citizens of this country. According to those provisions it is not necessary for such persons to do anything whatsoever in order that they may acquire full citizenship. The same is true with reference to Spanish subjects who were born in Spain proper and who had not elected to retain their allegiance to the Crown. By section 4 the doctrine or principle of citizenship by place of birth which prevails in the United States was extended to the Philippine Islands, but with limitations. In the United States every person, with certain specific exceptions, born in the United States is a citizen of that country. Under section 4 every person born after the 11th of April, 1899, of parents who were Spanish

[197] 1 Op. Atty. Gen. P. I. 551, 553; 3 Op. Atty. Gen. P. I. 299; 5 Op. Atty. Gen. P. I. 622; *In Re* Bosque *id.* etc.

[198] 23 Phil. 315 (1912) followed in Lim Teco *v.* Collector of Customs (1913) 24 Phil. 84; U. S. *v.* Ong Tianse (1915) XIII O. G. 467 and other cases. See to same effect Gely de Amadeo *v.* Reifkohl (1910) V Porto Rico Fed. 420.

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subjects on that date and who continued to reside in this country are at the moment of their birth *ipso facto* citizens of the Philippine Islands." (pp. 333, 334.)

A native of the Philippines, following precedents concerning Porto Ricans, would not lose the benefit of section 4 of the Philippine Bill because he was temporarily abiding elsewhere when the Treaty of Paris went into effect.[199] A woman of foreign nationality who marries a citizen of the Philippines follows his citizenship.[200]

Our Supreme Court has further laid down a number of interesting principles on facts concerning the citizenship of persons born of Chinese fathers and Filipina mothers within the Philippine Islands. The general rule is that such persons are citizens of the Philippine Islands, with certain well-recognized exceptions stated in United States *v.* Wong Kim Ark (169 U. S. 649 (1898)). "If, during minority they are taken to the country of their father's origin, they still remain citizens of the Philippine Islands. But in case the country of their father's origin claims them as citizens under the principle of *jus sanguinis,* such children are then considered as possessing a so-called dual nationality. . . . A child born of alien parents who goes to his father's native land at a tender age and remains there during minority, on becoming of age should, if he desires to retain his Filipino citizenship, indicate that desire by exercising his right of election; and a failure to express such a desire within a reasonable time should be regarded as a strong presumption of his purpose to become definitely identified with the body politic of his

[199] Acting Secretary of State Hill to Mr. Lenderink, April 29, 1901, Foreign Relations (1901) p. 32; Laborde *v.* Laborde (1907) II Porto Rico Fed. 493; XXIV Op. Atty. Gen. U. S. 40; 5 Op. Atty. Gen. P. I. 144; Roa *v.* Collector of Customs *id.*

[200] Martinez de Hernandez *v.* Casañas (1907) II Porto Rico Fed. 519.

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father's country."[201] In order to forfeit one's citizenship, an actual or express renunciation is not necessary; mere absence for a prolonged period, without intention to return, may be sufficient.[202] The rule of the Department of State of the United States Government is adopted, namely, "a continued residence abroad for three years, after the attainment of majority, produces a loss of citizenship, unless it is clearly proved that the *animus revertendi* existed"—as intention to return to the Philippines did indeed exist in the case cited.[203]

A well-written opinion of Attorney-General Araneta held that the Philippine Commission was without power to enact a law forbidding the emigration of Filipinos. The recognized policy of the Government of the United States,

[201] Lim Teco *v.* Collector of Customs (1913) 24 Phil. 84, 85, 88. See also on somewhat similar facts Lorenzo *v.* McCoy (1910) 15 Phil. 559; Muñoz *v.* Collector of Customs (1912) 23 Phil. 480; Que Quay *v.* Collector of Customs (1916 XIV O. G. 322, and other cases. Compare with opinion of Assistant Secretary of State Adee to the U. S. Consul at Amoy, Sept. 5, 1903, in the Chuntianlay Case. Van Dyne, Citizenship of the United States, pp. 225 *et seq.* The child born in these Islands, had by a Chinaman with a Filipina woman to whom he was not legally married, is presumed *prima facie* to be a citizen of this country, inasmuch as under the law he follows the status and nationality of his only legally recognized parent, who is his mother, a Filipina. U. S. *v.* Ong Tianse (1915) XIII O. G. 467.

[202] Lorenzo *v.* McCoy (1910) 15 Phil. 559.

[203] Muñoz *v.* Collector of Customs (1912) 23 Phil. 480, citing Van Dyne on Citizenship, pp. 276, 277 and *In Re* Bosque (1902) 1 Phil. 88 and holding that a male person, born in the Philippine Islands of a Filipina mother and a Chinese father, the father being domiciled with his permanent home in the Philippine Islands and subject to the jurisdiction of the government thereof, is *prima facie,* a citizen of the Philippine Islands; and the fact that he, at the age of fourteen, went to China and remained there until 1897 when he returned to the Islands where he has since continuously resided, is not in itself sufficient to change his status as a citizen of the Philippine Islands.

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continuing as a natural and inherent right under our system of government, is that the right of expatriation extends to natives of the Philippine Islands.[204] Act 2486 of the Philippine Legislature attempts to restrict the emigration of Filipinos, principally to Hawaii, by placing a tax on persons recruiting laborers for this purpose.

§ 126. Immunity of government from suit is inherent in all sovereign States. The reason given for the right by the United States Supreme Court is this: "The doctrine rests upon reasons of public policy; the inconvenience and danger which would follow from any different rule. It is obvious that the public service would be hindered, and the public safety endangered, if the supreme authority could be subjected to suit at the instance of every citizen and, consequently, controlled in the use and disposition of the means required for the proper administration of the Government." [205] Not long since, the same Court further said that "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground

[204] 3 Op. Atty. Gen. P. I. 591. "The right of expatriation is a natural and inherent right of all people." Act of Congress, July 27, 1868. See generally III Moore, International Law Digest, pp. 552 *et seq* and Van Dyne, Citizenship of the United States, Part IV, Ch. I.

[205] Field J. in The Siren (1869) 7 Wall. 152, 154, 19 L. Ed. 129. Gray J. in Briggs *v.* The Life Boats (1865) 11 Allen, 157, 162, says: "The broader reason is that it would be inconsistent with the very idea of supreme executive power, and would endanger the performance of the public duties of the sovereign, to subject him to repeated suits as a matter of right, at the will of any citizen; and to submit to the judicial tribunals the control and disposition of his public property, his instruments and means of carrying on his government in war and in peace, and the money in his treasury." And Davis J. in Nicholl *v.* U. S. (1869) 7 Wall. 122, 19 L. Ed. 123, says: "The principle is fundamental, applies to every sovereign power, and but for the protection which it affords, the government would be unable to perform the various duties for which it was

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that there can be no legal right as against the authority that makes the law on which the right depends."[206] A spirit of justice often causes States to consent to be sued in the courts by the citizen, or to establish special agencies, to redress injuries.

The United States can not be sued without its consent. This is a proposition usually treated as an established doctrine without discussion.[207] A Court of Claims, in which certain judicial proceedings can be brought against the United States, has been created by Congress.[208] Further waiver of exemption from suit can be accomplished only by legislative act.[209]

The early decision of the United States Supreme Court in the case of Chisholm *v.* Georgia[210] caused the enactment of the Eleventh Amendment to the Constitution, providing that "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state." The object was to prevent the indignity of subjecting a State of the Union, although not sovereign, to the coercive process of judicial tribunals at the instance of private individuals.[211] The Eleventh

created. It would be impossible for it to collect revenue for its support, without infinite embarrassments and delays, if it was subject to civil processes the same as a private person." These reasons are criticized by Miller J. in U. S. *v.* Lee (1882) 106 U. S. 196, 27 L. Ed. 171.

[206] Holmes J. in Kawananakoa *v.* Polyblank (1907) 205 U. S. 349, 51 L. Ed. 834.

[207] U. S. *v.* Lee (1882) 106 U. S. 196, 27 L. Ed. 171, citing cases.

[208] See Ch. 7, United States Judicial Code, and 22 Case and Comment, Dec. 1915, p. 564.

[209] Stanley *v.* Schwalby (1896) 162 U. S. 255, 40 L. Ed. 960.

[210] 2 Dall. 419, 1 L. Ed. 440 (1793). See also Hans *v.* La. (1890) 134 U. S. 1, 33 L. Ed. 842.

[211] *In re* Ayers (1887) 123 U. S. 443, 31 L. Ed. 216.

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Amendment protects only the State, not their political subdivisions or municipal corporations.[212]

Professor Burgess says that the United States Supreme Court has "shown a most wise and commendable spirit in the interpretation of this limitation upon individual rights" by assuming jurisdiction "in behalf of the individual, wherever this could be accomplished without making the commonwealth the original and direct defendant in the suit."[213] Thus, when the United States institutes a judicial action, it stands practically in the same position as a private litigant; for example, the defendant can present a set-off.[214] The interests of the State may be indirectly affected by a judicial proceeding without making it a party.[215] Reference to the nominal parties on the record does not always determine the question of whether a suit comes under the prohibition.[216] Public officers can

[212] Lincoln Co. *v.* Luning (1890) 133 U. S. 529, 33 L. Ed. 766.

[213] Burgess, Political Science and Constitutional Law, Vol. I, p. 241. He cites the following cases in substantiation: Cohen *v.* Virginia (1821) 6 Wheat. 264, 5 L. Ed. 257; Clark *v.* Barnard (1883) 108 U. S. 436, 27 L. Ed. 780; U. S. *v.* Lee (1882) 106 U. S. 196, 27 L. Ed. 171; U. S. *v.* Schurz (1880) 102 U. S. 378, 26 L. Ed. 167; Davis *v.* Gray (1873) 16 Wall. 203, 21 L. Ed. 447; Board of Liquidation *v.* McComb (1876) 92 U. S. 531, 23 L. Ed. 623; Poindexter *v.* Greenhow (1885) 114 U. S. 270, 29 L. Ed. 185.

[214] The Siren (1869) 7 Wall. 152, 19 L. Ed. 129.

[215] "Cases of this sort may arise in courts of equity, where property is brought under its jurisdiction for foreclosure, or some other proceeding; and the state, not having the title in fee, or the possession of the property, has some lien upon it, or claim against it, as a judgment against the mortgagor, subsequent to the mortgage. In such a case the foreclosure and sale of the property will not be prevented by the interest which the state has in it, but its right of redemption will remain the same as before." Christian *v.* Atlantic & N. C. R. Co. (1890) 133 U. S. 233, 247, 241-246, 33 L. Ed. 589. See, also, Cunningham *v.* Macon, etc., Ry. (1883) 109 U. S. 446, 451, 452, 27 L. Ed. 992.

[216] Poindexter *v.* Greenhow (1885) 114 U. S. 270, 287, 29 L. Ed. 182.

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be sued in their personal character.[217] And there are other exceptions which limit the general rule.

While the United States can not be sued without its consent because sovereign, and while a State is equally protected by the Eleventh Amendment, no such barriers safeguard the territories. Notwithstanding, the incorporated territory of Hawaii was held by the United States Supreme Court as within the prohibition. Mr. Justice Holmes, following the quotation given in the beginning of this section, continued:

"As the ground is thus logical and practical, the doctrine is not confined to powers that are sovereign in the full sense of juridical theory, but naturally is extended to those that, in actual administration, originate and change at their will the law of contract and property, from which persons within the jurisdiction derive their rights. A suit presupposes that the defendants are subject to the law invoked. Of course it cannot be maintained, unless they are so. But that is not the case with a territory of the United States, because the territory itself is the fountain from which rights ordinarily flow. It is true that Congress might intervene, just as, in the case of a State, the Constitution does, and the power that can alter the Constitution might. But the rights that exist are not created by Congress or the Constitution, except to the extent of certain limitations of power." [218]

Likewise Porto Rico, although the question was complicated by a provision in the organic act authorizing the body politic "to sue and be sued as such," was held as not taken out of the general rule relative to immunity from suit. The Chief Justice of the United States Supreme Court, besides meeting this objection, said: "It is not

[217] See Willoughby on the Constitution, Vol. 2, pp. 1074 *et seq.*

[218] Kawananakoa *v.* Polyblank (1907) 205 U. S. 349, 353, 51 L. Ed. 834.

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open to controversy that, aside from the existence of some exception, the government which the organic act established in Porto Rico is of such nature as to come within the general rule exempting a government sovereign in its attributes from being sued without its consent. In the first place, this is true because, in a general sense, so far as concerns the frame-work of the Porto Rican government and the legislative, judicial, and executive authority with which it is endowed, there is, if not a complete identity, at least, in all essential matters, a strong likeness to the powers, usually given to organized territories, and, moreover, a striking similarity to the organic act of the Hawaiian Islands (act of April 30, 1900, chap. 339, secs. 6, 55, 31 Stat. at L. 141, 142 and 150). But, as the incorporated territories have always been held to possess an immunity from suit, and as it has been, moreover, settled that the government created for Hawaii is of such a character as to give it immunity from suit without its consent, it follows that this is also the case as to Porto Rico." [219] The doctrine is re-enforced for Porto Rico by comparison of its status, not only with an organized, incorporated territory, but also with a State, through a statement of the Supreme Court of Porto Rico to the effect that Porto Rico enjoys substantially all the sovereign powers possessed by any State of the Union.[220] However, a suit to compel a Porto Rican official to carry out his duties under a statute is not a suit against the sovereign.[221]

When we take up the point in relation to the Govern-

[219] People of Porto Rico *v.* Rosaly (1913) 227 U. S. 270, 57 L. Ed. 507. See also Fajardo Sugar Estates Company *v.* Richardson (1913) 6 Porto Rico Fed. 224, likewise holding that Porto Rico cannot be sued without its consent.

[220] *In re* Neagle (1914) 21 Porto Rico 339.

[221] Fajardo Sugar Estates Company *v.* Richardson (1913) 6 Porto Rico Fed. 224.

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ment of the Philippine Islands, we find no decisive case. As a matter of fact no instance is known where an attempt has been made to sue the Insular Government directly without its consent. In the one case in which the question was raised, the Supreme Court met the issue by merely affirming the subsidiary principle of Tindal *v.* Wesley, namely: "But the eleventh amendment gives no immunity to officers or agents of a State in withholding the property of a citizen without authority of law. And when such officers or agents assert that they are in rightful possession, they must make good that assertion when it is made to appear in a suit against them as individuals that the legal title and right of possession is in the plaintiff." [222] In another case in which the Philippine Government expressly consented to be sued, the Supreme Court merely observed that "All admit that the Insular Government (the defendant) cannot be sued by an individual without its consent." [222a] We believe that this *dictum* is correct, for the government established by the United States in the Philippines is of such a nature as to bring it within the general rule exempting a State from suit without its consent. The framework of government is, in its essentials, quite similar to Hawaii, Porto Rico, and a State of the American Union. It has, at least, as many sovereign attributes as those territories or a state. Reasons of public policy operate as strongly here as elsewhere. Laws are made here and logic teaches that a legal right can not subsist against the authority which creates it. It can not be presumed that Congress intended to permit destruction of a government which it went to such pains to set up. True it is that barriers are thus raised against legitimate claimants. No Court of Claims

[222] Tindal *v.* Wesley (1897) 167 U. S. 204, 42 L. Ed. 137, affirmed in Tan Te *v.* Bell (1914) 27 Phil. 354.

[222a] Merritt *v.* Gov't of the Philippine Islands (1916) XIV O. G. 1077, 1078.

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or similar institution exists. The Insular Auditor is granted authority over accounts in such terms as to make it practically impossible for any action against him to lie in the courts.[223] Public funds in the hands of officers of the Government can also not be reached indirectly by attachment or garnishment.[224] The individual having a claim against the Philippine Government, which has not been passed in audit by the Insular Auditor, must, unless abuse of discretion is shown when mandamus might lie, first obtain from the Legislature a special act authorizing suit. A number of such laws, in which the Government through the Philippine Commission or Legislature has consented to be sued in the courts, have been passed—thus impliedly indicating the interpretation of the question by all three departments and acquiescence therein by the public. Such acts abrogating immunity will be strictly construed and will give rise to no liability not previously existing.[224a]

We conclude that the Government of the Philippine Islands can not be sued without its consent, which must be manifested by special Act of the Legislature, and that all the rules herein stated for the United States apply as well to similar facts in the Philippines. Local subdivisions, as provinces, municipalities, and townships, can, of course, sue and be sued, as indeed is expressly provided by law.

§ 127. Taxation, eminent domain, and police power explained.—These great forces of government are alike in that they exist independently of fundamental law as a necessary attribute of sovereignty. They "underlie

[223] See Act 1792, The Accounting Act (Adm. Code, Ch. 23), Philippine Autonomy Act, secs. 24, 25, and Lamb *v.* Phipps (1912) 22 Phil. 456.

[224] 3 Op. Atty. Gen. P. I. 51, 371, citing cases; 4 Op. Atty. Gen. P. I. 82; Buchanan *v.* Alexander (1846) 4 How. 20, 11 L. Ed. 857.

[224a] Merrit *v.* Gov't of the Philippine Islands (1916) XIV O. G. 1077; 36 Cyc. 915.

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the Constitution and rest upon necessity, because there can be no effective government without them. . . . They are as enduring and indestructible as the state itself." [225] They are also alike in that they constitute the three methods by which the State interferes with private property rights.[226] And they are alike in that each presupposes an equivalent compensation—by taxation, in the form of protection and benefits from the government—by eminent domain, through the market value of the property taken—and by the police power, although to a less direct and appreciable degree, through the maintenance of a healthy economic standard of society.[227] Eminent domain differs from taxation in that in the former case the citizen surrenders something beyond his due proportion for the public good.[228] The police power differs from the other two forces, because the compensation is not immediate or possibly apparent and may even cause annoyance and financial loss, but is mostly a just restraint for the public good.[229] Of course other distinctions exist, but they are difficult to point out until the actual facts arise for resolution.

§ 128. Taxation.[230]

Philippines.	*United States.*
In making changes in taxation the Commission "are to bear in mind that taxes which tend to penalize or repress industry and	"The Congress shall have power,—To lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the

[225] People *v.* Adirondack Railway Co. (1899) 160 N. Y. 225, 236-238, 54 N. E. 689.

[226] See Stimson, Popular Law-Making, Ch. VII. ..

[227] Churchill *v.* Rafferty (1915) XIV O. G. 383; Cooley's Constitutional Limitations, 7th Ed., p. 716.

[228] Cooley's Constitutional Limitations, 7th Ed., p. 812.

[229] U. S. *v.* Toribio (1910) 15 Phil. 85.

[230] See generally Cooley on Taxation, 3d Ed., especially Chs. I-VI; Cooley's Constitutional Limitations, 7th Ed., Ch. XIV.

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enterprise are to be avoided; that provisions for taxation should be simple, so that they may be understood by the people; that they should affect the fewest practicable subjects of taxation which will serve for the general distribution of the burden." (President's Instructions to the Philippine Commission.)

"That the rule of taxation in said Islands shall be uniform." (Philippine Bill, sec. 5, par. 16.)

"That the rule of taxation in said Islands shall be uniform." (Philippine Autonomy Act, sec. 3, par. 16.)

common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." (United States Constitution, art. I, sec. 8, par. 1.)

(State constitutions.) [231]

Taxation is here considered not merely because of the uniformity clause to be found in Philippine Organic Law, but because sheltered under the larger ægis of due process of law and the equal protection of the laws. We, of course, confine discussion to constitutional features leaving fiscal matters such as assessment and collection for the courses in Finance and Taxation.

Taxes are burdens or charges imposed by the legislature upon persons or property to raise money for public purposes.[232] They are not contracts between party and party either express or implied, but are positive acts of the government to the making and enforcing of which

[231] Provisions described in Cooley on Taxation, 3d Ed. pp. 274-342.

[232] Cooley's Constitutional Limitations, 7th Ed., p. 678; Cooley on Taxation, 3d Ed., p. 1. Coulter, J., in Northern Liberties *v.* St. John's Church (1850) 13 Pa. 104, 107, said: "I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in all its machinery and operations—that they are imposed for a public purpose." See Loan Association *v.* Topeka (1875) 20 Wall. 655, 22 L. Ed. 455.

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personal consent is not required.[233] Taxes are classified as either direct or indirect. They assume various forms, of which the most usual are found in the Philippines.[234] The power to tax is "the strongest, and most pervading of all the powers of government, reaching directly or indirectly to all classes of people."[235] Mr. Chief Justice Marshall said that the power to tax involves the power to destroy.[236] The courts scarcely venture to declare any restrictions on the power of taxation. Necessity, for instance, is not the governing consideration.[237] "The power of taxation being legislative, all the incidents are within the control of the Legislature. The purposes for which a tax shall be levied; the extent of taxation; the apportionment of the tax; upon what property or class of persons the tax shall operate; whether the tax shall be general or limited to a particular locality, and in the latter case, the fixing of a district of assessment; and method of collection, and whether a tax shall be a charge upon both person and property, or only on the land—are matters within the discretion of the Legislature and in respect to which its determination is final." [238]

If one were to acquiesce with the views of two cynical Frenchmen, one would perforce condemn all taxation as a grave injustice. "The act of taxation consists," said Louis XIV's minister, Colbert, "in so plucking the goose (*i. e.* the people) as to produce the largest quantity of feathers with the least possible amount of squealing."

[233] Yangco *v.* City of Manila (1910) 17 Phil. 184.

[234] See Cooley on Taxation, 3d Ed., Ch. I, and Churchill *v.* Rafferty (1915) XIV O. G. 383.

[235] Loan Association *v.* Topeka (1875) 20 Wall. 655, 22 L. Ed. 455.

[236] McCulloch *v.* Maryland (1819) 4 Wheat. 316, 4 L. Ed. 579.

[237] People *v.* Salem (1870) 20 Mich. 452, 4 Am. Rep. 400.

[238] Genet *v.* City of Brooklyn (1885) 99 N. Y. 296, 306, 1 N. E. 777; People *v.* Reardon (1906) 184 N. Y. 431, 77 N. E. 970, 8 L. R.A. (N.S.) 314, 112 Am. St. Rep. 628, 6 Ann. Cas. 515.

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"The art of government," said Voltaire, "is to compel two-thirds of the people to pay all they can to support the other one-third." Still a third son of France, Montesquieu, in his definition of taxation found in his Spirit of the Laws meets such assertions and more fairly indicates the justification of taxation. "Each citizen," he says, "contributes to the revenues of the State a portion of his property in order that his tenure of the rest may be secure." In other words, taxes and protection are reciprocal. The citizen pays the part demanded in order to secure the benefits of organized society. Ordinarily, he can expect for his contribution an equivalent in the protection of his person and property, in adding to the value of such property, or in the creation or maintenance of public conveniences in which he shares—such for instance as roads, bridges, sidewalks, pavements, and schools for the education of his children.[239]

Great as is the power of taxation, there are, nevertheless, positive limitations.[240] From the standpoint of science, Adam Smith enumerates certain maxims which should guide the Legislature in its imposition of taxes. In substance, these are: "1. That the subjects of every state ought to contribute to the support of the government as nearly as possible in proportion to the revenue which they respectively enjoy under its protection. 2. The tax which each is to pay ought, as respects the time and manner of payment, and the sum to be paid, to be certain and not arbitrary. 3. It ought to be levied at the time and in the manner in which it is most likely to be convenient to the contributor to pay it; and 4. It ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above

[239] See Vattel Law of Nations, Bk. I, Ch. 20; Union Refrigerator Transit Co. *v.* Kentucky (1905) 199 U. S. 194, 50 L. Ed. 150.

[240] See Cooley on Taxation, 3d Ed., Ch. III.

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what it brings into the public treasury." [241] President McKinley instructed the Commission to move along somewhat similar sensible lines by the words which are quoted at the head of this section. Besides, as a further principle which addresses itself principally to one's conception of justice, double taxation, while lawful, should, wherever possible, be prevented.[242] From the standpoint of construction, the law imposing a tax is to be construed "fairly for the government and justly for the citizen." [243] From a standpoint which practically attains no more than an ethical injunction, Philippine statutes provide that "taxation shall be just." [244] But more important than the foregoing, due process of law and equality of the laws and inherent restrictions outside the Constitution oblige the government in the exercise of the taxing power to conform, among others, to the following rules: 1. That the tax shall be for a public purpose. 2. That it shall operate uniformly upon those subject to it. 3. That either the person or the property taxed shall be within the jurisdiction of the government levying the tax. 4. That in the assessment and collection of the tax certain guaranties against injustice to individuals, especially by way of no-

[241] Smith, Wealth of Nations, Bk. IV, Ch. 2. The true theory and the one that ought to be observed in levying taxes is tersely expressed in the forty-first section of the Constitution adopted by Pennsylvania in 1776, which reads as follows: "No public tax, custom or contribution shall be imposed upon, or paid by, the people of this state, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be if not collected, which being well observed, taxes can never be burdens."

[242] Cooley on Taxation, 3d Ed., pp. 391 *et seq;* Buck *v.* Beach (1907) 206 U. S. 392, 51 L. Ed. 1106.

[243] Hubbard *v.* Brainard (1869) 35 Conn. 563. But see sec. 176, note 168 *infra.*

[244] Act 82, sec. 42; Act 1397, sec. 40; Adm. Code, secs. 2233, 2346.

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tice and opportunity for hearing, shall be provided.[245] Taking these up *ad seriatim,* we find:

1. Our local laws all declare, in substance, that revenues shall be devoted exclusively to public purposes.[246] The term "public purposes," as employed to denote the objects for which taxes may be levied, is "merely a term of classification, to distinguish the object for which according to settled usage, the government is to provide, from those which, by the like usage, are left to private inclination, interest or liberality. It creates a broad and manifest distinction—one in regard to which there need be neither doubt nor difficulty—between public works and private enterprises, between the public conveniences which it is the business of government to provide and those which private interest and competition will supply whenever the demand is sufficient." [247] Notwithstanding these words of a great judge, it is not always easy to draw the line in all cases between what is a public purpose in this sense and what is not. "The character of the agency employed does not and cannot determine the nature of the end to be secured. . . . If the purpose is public, it makes no difference that the agent by whose hand it is to be attained is private. Nor, if the purpose were private, would it make any difference that a public agent was employed." [248] A resolution of the case frequently depends upon the facts and circumstances concerning the particular subject matter in regard to which the character of the use is questioned.[249] Common examples of government funds used for a public purpose are secular in-

[245] See Willoughby on the Constitution, Vol. I, p. 584.

[246] Act 82, sec. 43, par. 1; Act 1397, sec. 42; Act 2408, sec. 50, par. 1; Adm. Code, secs. 2234, 2346, 2614.

[247] People *v.* Salem (1870) 20 Mich. 452, 4 Am. Rep. 400.

[248] Perry *v.* Keene (1876) 56 N. H. 514.

[249] Fallbrook Irrigation District *v.* Bradley (1896) 164 U. S. 112, 41 L. Ed. 369.

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struction, public charity, amusements and celebrations, public health, highways, and irrigation of arid lands.[250] Aid for private business enterprises is not a public purpose.[251] As a corollary to the last statement, a recent decision of the Supreme Court of Massachusetts held that a person lawfully engaged in business "cannot be driven out by taxation to support his rival, even though that rival be an arm of government." [252]

However particular cases may be decided as falling within or without the above rules, all must certainly agree that neither the law nor public policy can look with favor on special privileges for the few. The emphatic words of the United States Supreme Court are: "To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation." [253] A well-known Massachusetts opinion contains the following:

"The power to levy taxes is founded on the right, duty, and responsibility to maintain and administer all the governmental functions of the state, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service, or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However cer-

[250] Cooley on Taxation, 3d Ed., pp. 192 *et seq.*

[251] Cooley on Taxation, 3d Ed., pp. 206-208.

[252] Opinion of the Justices (1912) 211 Mass. 624, 98 N. E. 611, 42 L.R.A. (N.S.) 221.

[253] Loan Association *v.* Topeka (1875) 20 Wall. 655, 22 L. Ed. 455.

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tain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the state, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

"The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force." [254]

2. Coming now to the provision that taxation shall be uniform, we find it re-enforced by Philippine statutory law.[255] It is, of course, true that notwithstanding this basic rule absolute justice and equality are not humanly attainable. "Perfect uniformity and perfect equality of taxation . . . in all the aspects in which the human mind can view it, is a baseless dream." [256] Thus "there are doubtless many individual cases where the weight of a tax falls unequally upon the owners of the property taxed. This is almost unavoidable under every system of direct taxation. But the tax is not rendered illegal by such discrimination. Thus, every citizen is bound to pay his proportion of a school tax, though he have no children; of a police tax, though he have no

[254] Lowell *v.* Boston (1873) 111 Mass. 454, 15 Am. Rep. 39.

[255] Act 82, sec. 42; Act 1397, sec. 40; Adm. Code, secs. 2233, 2346.

[256] Head Money Cases (1884) 112 U. S. 580, 28 L. Ed. 798. See also Commonwealth *v.* Savings Bank (1862) 5 Allen 428, 436; Grim *v.* School Dist. (1868) 57 Pa. St. 433, 437.

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buildings or personal property to be guarded; or of a road tax, though he never use the road." [257]

Classification is permitted. In the case of New Orleans *v.* Kaufman decided by the Supreme Court of Louisiana and followed by the Attorney-General of the Philippines, it was said: "The constitutional requirement that taxation shall be equal and uniform throughout the State (art. 118) does not inhibit the legislature from, nor deprive it of, the power of dividing the objects of taxation into classes, but it does command the lawmaking department of the Government to impose the same burden upon all who are in the same class." [258] While the legislature possesses a wide latitude, the classification must have some just and reasonable basis. In a quotation followed in the same opinion of the Attorney-General, it was said: "While the State may classify for the purposes of license taxation, that is, taxation upon business or occupations, and may thus tax one business without taxing another, it cannot make a classification which is arbitrary and has no just and reasonable basis. . . . Where a license tax is imposed upon those of a certain business, it must be levied without discrimination upon all engaged therein, within the authority levying the tax. This is essential in order that the tax may be equal and uniform as required by the State constitutions, as well as under the provision for equal protection of the laws. . . ." [259] Following

[257] Union Refrigerator Transit Co. *v.* Kentucky (1905) 199 U. S. 194, 50 L. Ed. 150.

[258] 29 La. Ann. 283 (1877), quoted in III Op. Atty. Gen. P. I. 266. See also Villata *v.* Stanley (1915) XIV O. G. 170, distinguishing "equality" from "uniformity."

[259] Judson on Taxation, pp. 599-601, quoted in III Op. Atty. Gen. P. I. 266. "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot

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these principles, the Supreme Court of the Philippines has held that the portion of section 5 of the Philippine Bill providing "that the rule of taxation in said Islands shall be uniform" is not contravened by a municipal ordinance classifying and graduating license fees for fishing privileges by reference to the different classes of apparatus in common use by those exercising such privileges.[260] Licenses for cockpits and the sale of liquors must, likewise, conform to the rules of classification.[261]

The statute may select the subjects for taxation, leaving others exempt without violating the constitutional prohibition. The familiar rule is this: "The right to make exemptions is involved in the right to select the subjects of taxation and apportion the public burdens among them, and must consequently be understood to exist in the law-making power wherever it has not in terms been taken away."[262] Our statutes name the customary exemptions, such as a minimum value (fifty pesos, one hundred pesos, or two hundred pesos according to the local division), burying grounds, churches, and lands and buildings for religious, charitable, scientific, and educational purposes; also homesteads prior to vesting of title, machinery, and fruit trees and bamboo plants; these statutes should be construed strictly though fairly.[263]

be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. Gulf, C. & S. F. R. Co. *v.* Ellis (1897), 165 U. S. 150, 155, 165, 41 L. Ed. 666, 668, 671, 17 Sup. Ct. 255; Cotting *v.* Kansas City Stock Yards Co. (Cotting *v.* Godard) (1901) 183 U. S. 79, 46 L. Ed. 92, 22 Sup. Ct. 30; Connolly *v.* Union Sewer Pipe Co. (1901), 184 U. S. 540, 559, 46 L. Ed. 679, 689, 22 Sup. Ct. 431." Southern Ry. Co. *v.* Greene, 216 U. S. 400, (1910) 54 L. Ed. 536, 17 Ann. Cas. 1247.

[260] U. S. *v.* Sumulong (1915), XIII O. G. 851.

[261] III Op. Atty. Gen. P. I. 266; Op. Atty. Gen. P. I., Aug. 21, 1911.

[262] See Cooley on Taxation, 3d Ed., pp. 262 *et seq.* quoted at p. 343.

[263] Act 655, sec. 3, as amended by Act 680, sec. 1; Act 82, sec. 62; Act 183, sec. 48; Act 1397, sec. 53; Act 1963, sec. 24; Adm. Code,

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Some courts hold that tax exemptions to enterprises primarily of a private nature stand on the same footing as grants of public money derived from taxation.[264] More commonly such exemptions are assumed to be a valid means of encouraging various species of industry.[265] One governmental agency should not, and here does not, attempt to tax the property of another governmental agency.[266] So the Attorney-General was of the opinion that the municipality of San Felipe Neri had no right to assess for taxation the property of the city of Manila known as "El Depósito" "upon fundamental principles of government."[267] It is beyond the competency of the Philippine Government to levy a tax on articles imported for the use of the United States Government.[268] But the fact that a railroad company is aided in its business by the Philippine Government cannot of itself exempt it from the burdens of taxation.[269]

3. Persons or property must be within the territorial limits.[270] In one case the United States Supreme Court said: "It is also essential to the validity of a tax that the property shall be within the territorial jurisdiction of the taxing power. . . . The fact that such property is visible, easily found and difficult to conceal, and the tax readily collectible, is so cogent an argument for its

secs. 432, 2350, 2454, 2548. See Catholic Church *v.* Hastings (1906), 5 Phil. 701.

[264] Brewer Brick Co. *v.* Brewer (1873), 62 Me. 62, 16 Am. Rep. 395; Weeks *v.* Milwaukee (1860), 10 Wis. 186.

[265] Loan Association *v.* Topeka (1875), 20 Wall. 655, 22 L. Ed. 455.

[266] Op. Atty. Gen. P. I., March 14, 1910. See further Malcolm's Compiled Municipal Code, pp. 154, 155, notes 4-9 and Acts cited under note 263.

[267] III Op. Atty. Gen. P. I. 398.

[268] XXIX Op. Atty. Gen. U. S. 442. See Act 355, sec. 390, as amended.

[269] XXIX Op. Atty. Gen. U. S. 164.

[270] See Cooley on Taxation, 3d Ed., pp. 84-95.

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taxation at its situs, that of late there is a general consensus of opinion that it is taxable in the state where it is permanently located and employed, and where it receives its entire protection, irrespective of the domicil of the owner." [271] In another case, speaking of personal and intangible property, the same Court said: "It has long been held that personal property may be separated from its owner, and he may be taxed on its account at the place where the property is, although it is not the place of his own domicil, and even if he is not a citizen or resident of the state which imposes the tax. Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S. 18, 22, 35 L. Ed. 613, 616, 3 Inters. Com. Rep. 595, 11 Sup. Ct. 876; Tappan *v.* Merchants' Nat. Bank, 19 Wall. 490, 22 L. Ed. 189; People *ex rel.* Hoyt *v.* Tax & A. Com'rs, 23 N. Y. 224, 240. The same rule applies to intangible property. Generally speaking, intangible property in the nature of a debt may be regarded, for the purposes of taxation, as situated at the domicil of the creditor and within the jurisdiction of the state where he has such domicil." [272] So a municipality in the Philippines can not tax land beyond its limits for municipal purposes.[273]

4. The Legislature determines the method of assessment and collection. Philippine law zealously safeguards the rights of taxpayers, especially those delinquent. As one further cardinal principle, it can be mentioned that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation.[274]

Even with these four fundamental rules working in

[271] Union Refrigerator Transit Co. *v.* Kentucky (1905), 199 U. S. 194, 50 L. Ed. 150.

[272] Buck *v.* Beach (1907), 206 U. S. 392, 51 L. Ed. 1106.

[273] IV Op. Atty. Gen. P. I. 84 following Wells *v.* Weston (1856) 22 Mo. 384.

[274] Adams Express Co. *v.* Ohio State Auditor (1897), 166 U. S. 185, 41 L. Ed. 965.

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his behalf, the security provided for the taxpayer does not stop. He may find that the burden is not a tax but only an unlawful confiscation for which redress can be obtained under eminent domain. He must remember that he possesses the right of recovery of payment of an alleged tax under protest and can bring suit for this purpose.[275] But a person who has paid a tax voluntarily and without objection or protest of any kind, cannot maintain an action to recover the tax so paid.[276] And ordinarily the claim that a tax is illegal or that the law by virtue of which it is imposed is unconstitutional, will not authorize a court to restrain its collection by injunction.[277] A further and final elucidation is that of Mr. Chief Justice Marshall in McCulloch *v.* Maryland, oft quoted but never without gaining new favor:

"The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of the government cannot be limited, they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislature and on the influence of the constituents over their representatives to guard themselves against its abuse." [278]

[275] See Ayala de Roxas *v.* City of Manila (1914), 27 Phil. 336.

[276] Fernendez *v.* Shearer (1911), 19 Phil. 75.

[277] Churchill *v.* Rafferty (1915), XIV O. G. 383.

[278] 4 Wheat. 316, 4 L. Ed. 579 (1819). See also Providence Bank *v.* Billings (1830), 4 Pet. 514, 561, 7 L. Ed. 939, in which the Chief

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§ 129. Eminent domain.—[279]

Philippines.	*United States.*
"That private property shall not be taken for public use without just compensation." (President's Instructions to the Philippine Commission.)	"Nor shall private property be taken for public use without just compensation." (United States Constitution, fifth amendment, last clause.)
"That the Government of the Philippine Islands is hereby authorized, subject to the limitations and conditions prescribed in this Act, to acquire, receive, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain." Philippine Bill, sec. 63.)	
"That the government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain for the construction and operation of works of public utility and service. . . . : *Provided,* That no private property shall be taken for any purpose under this section without just compensation paid or tendered therefor and that such authority to take and occupy land shall not authorize the taking, use, or oc-	

Justice said: "This vital power may be abused; but the interest, wisdom, and justice of the representative body, and its relation with its constituents, furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally."

[279] See generally Lewis on Eminent Domain, 2d Ed., and Cooley's Constitutional Limitations, 7th Ed., Ch. XV.

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cupation of any land except such as is required for the actual necessary purposes for which the franchise is granted." (Philippine Bill, sec. 74, portion.)

"Private property shall not be taken for public use without just compensation." (Philippine Autonomy Act, sec. 3, par. I, last sentence.)

"That the government of the Philippine Islands may grant franchise and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, . . .: *Provided,* That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted." (Philippine Autonomy Act, sec. 28, portion.)

The State can displace the rights of private ownership and control by appropriating private property against the owner's will through an exercise of sovereign authority. The government impliedly reserves this right when property is acquired from it or under its protection.[280] This power which we denominate "eminent domain" is vested in the Philippine Government by the provisions above quoted.[281] The time, manner, and occasion of its exercise are then wholly in the control and discretion of the

[280] Cooley's Constitutional Limitations, 7th Ed. pp. 752, 753.
[281] XXIV Op. Atty. Gen. U. S. 640.

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Legislature, except as restrained by the organic law.[283] The Civil Code in article 349 provides: "No one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after the proper indemnity." This article, Solicitor-General Araneta held, is broader in its scope than the provisions of the United States Constitution requiring compensation for property taken for public use.[283] Other public laws provide the manner of exercising the right.[284] The Government of the United States and the Government of the Philippine Islands, and by delegation, the Department of Mindanao and Sulu and provinces, municipalities, and railroad corporations, are authorized to institute actions for the enforcement of the right of eminent domain. The necessity or advantage of exercising the right are determined for the Insular Government by the Governor-General; for the Department of Mindanao and Sulu by the Departmental Governor; for provinces and municipalities by the provincial board with the approval of the Governor-General.[284a] But while the State may delegate the power, it may resume it at will, subject to property rights and the duty of paying therefor.[285] A statute conferring upon a railroad corporation the exceptional privilege of exercising the right of eminent domain will be construed strictly in favor of landowners whose property is affected.[286]

Eminent domain, as accurately defined, "is the rightful

[282] Fairchild *v.* St. Paul (1891), 46 Minn. 540, 49 N. W. 325.

[283] I Op. Atty. Gen. P. I. 265. See also Santos *v.* Director of Lands (1912), 22 Phil. 424.

[284] See Code of Civil Procedure, secs. 241-253, as amended; Act 294; Act 1258, as amended by Act 1592; Act 83, sec. 20; Act 1458, sec. 9; Act 2249; Adm. Code, various secs.

[284a] Adm. Code, secs. 80 (*h*), 2032 (*e*), 2191, 2571 (*q*), 2595.

[285] People *v.* Adirondack Railway Co. (1899), 160 N. Y. 225, 54 N. E. 689.

[286] Tenorio *v.* Manila Railroad Co. (1912), 22 Phil. 411.

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authority, which exists in every sovereignty, to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, necessity, convenience, or welfare may demand." [287] The power is exactly as circumscribed in the benign provision of the Constitution in question—the right of the State as sovereign to take private property for public use upon making just compensation. There is no limitation upon its exercise, except that the use must be public, compensation must be made, and due process of law observed.[288] An analysis of the constitutional provision resolves into the following components: Private property; a taking; public use; and just compensation.

As to the first, the power of the State to take private property for the public use reaches every description of property within its jurisdiction.[289] On the other hand, the constitutional prohibition protects all the essential elements of ownership which make property valuable.[290]

Where there is a practical destruction or material impairment of value of private property, or where the owner is deprived of its ordinary use, there is a "taking" which demands compensation; but otherwise, where the possession or enjoyment of property is not disturbed, or one is merely put to some extra expense in warding off consequences, or where there is mere personal inconvenience or

[287] Cooley's Constitutional Limitations, 7th Ed. p. 754.

[288] Secombe *v.* Railroad Co. (1874), 23 Wall. 108, 23 L. Ed. 67; People *v.* Adirondack Railway Co. (1899), 160 N. Y. 225, 54 N. E. 689.

[289] Eastern Railroad Co. *v.* Boston & M. R. R. (1872), 111 Mass. 125, 15 Am. Rep. 13; Cincinnati *v.* L. & N. Ry. (1912), 223 U. S. 390, 56 L. Ed. 481; Cooley's Constitutional Limitations, 7th Ed. pp. 756-759—but not money.

[290] Eaton *v.* Boston, C. & M. R. R. (1872), 51 N. H. 504, 12 Am. Rep. 147.

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annoyance to the occupant.[291] A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit.[292] Generally, too, the taking must be limited to the property needed for the use for which the appropriation is made.[293]

"The right of eminent domain," it has been said, "does not imply a right in sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, where the public interest will be in no way promoted by such transfer." [294] Philippine statute law names the following purposes for which private property

[291] Manigault *v.* Springs (1905), 199 U. S. 473, 483, 50 L. Ed. 274; Cooley's Constitutional Limitations, 7th Ed. pp. 781 *et seq.*

[292] Mugler *v.* Kansas (1887), 123 U. S. 623, 668, 31 L. Ed. 205.

[293] Matter of Albany Street (1834), 11 Wend. 149, 25 Am. Dec. 618; Cooley's Constitutional Limitations, 7th Ed. pp. 779-781. But the Organic Act for the Department of Mindanao and Sulu (Act 2408) in sec. 47 (*n*) (Adm. Code, sec. 2611 (*n*)) contains the following as to excess condemnation by a municipal council: "To acquire, take, condemn, or appropriate more land and property than is needed for actual construction in connection with any improvement herein authorized: *Provided, however,* That the additional land and property so authorized to be acquired, taken, condemned, or appropriated shall be no more than sufficient to form suitable building sites abutting on such improvement. After so much of the land and property has been appropriated for the improvement as is needed therefor, the remainder may be sold or leased. The municipal council is hereby further authorized and empowered to provide by general or special ordinance, the manner in which the power herein granted may be exercised, subject to the provisions of general law as to procedure: *And provided further,* That no ordinance passed pursuant to the provisions of this subsection shall be valid or take effect until it shall have been approved by the provincial board and the department governor."

[294] Beekman *v.* Saratoga & Schenectady R. R. Co. (1831), 3 Paige, 73, 22 Am. Dec. 679.

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may be taken: Schools, cemeteries, crematories, parks, playgrounds, public buildings, streets, market sites, public plazas, sidewalks, bridges, artesian wells, drainage, water supply and sewerage systems, cess-pools, ferries, levees, wharves, piers, and railroads. Presumably all these are "public uses." "If we examine the subject critically, we shall find that the most important consideration in the case of eminent domain is the necessity of accomplishing some public good which is otherwise impracticable, and we shall also find that the law does not so much regard the means as the need." [295] But it can never be admitted that the Legislature has an unlimited right to destroy property without compensation, on the ground that destruction is not an appropriation to public use. For example, "When a healthy horse is killed by a public officer, acting under a general statute, for fear that it should spread disease, the horse certainly would seem to be taken for public use as truly as if it were seized to drag an artillery wagon. The public equally appropriate it, whatever they do with it afterwards." [296]

Most of our local cases on eminent domain concern the practical point of "just compensation." This is a judicial question.[297] "Compensation" means an equivalent for the value of the property taken. The word "just" is used in order to intensify the meaning of the word "compensation;" to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample. "Just compensation," consequently, according to our Supreme Court, "means a fair and full equiva-

[295] People *v.* Salem (1870), 20 Mich. 452, 480, 4 Am. Rep. 400.

[296] Miller *v.* Horton (1891), 152 Mass. 540, 10 L.R.A. 116.

[297] City of Manila *v.* Estrada (1913), 25 Phil. 208; Manila Railroad Co. *v.* Velasquez (1915), XIII O. G. 2216; Monongahela Navigation Co. *v.* U. S. (1893), 148 U. S. 312, 37 L. Ed. 463. Compare with City of Manila *v.* Battle (1914), 27 Phil. 34.

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lent for the loss sustained.[298] In the language of the United States Supreme Court, "the just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public."[299] The general rule is that the market value of the property taken plus the consequential damages, if any, minus the consequential benefits, if any, is the just compensation to which the owner of condemned property is entitled under the law.[300] The difficulty arises in the application of the rule.[301] Exceptional circumstances will modify the most closely guarded rules.[302] The Supreme Court of the United States in a carefully worded statement, followed by the Supreme Court of the Philippines, marks out the scope of the inquiry, as follows: "In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the

[298] City of Manila *v.* Estrada, *id.;* Manila Railroad Co. *v.* Velasquez, *id.*

[299] Bauman *v.* Ross (1897), 167 U. S. 548, 574, 42 L. Ed. 270. See City of Manila *v.* Corrales (1915), XIV O. G. 53. "These words cover more than the mere value of the quantity taken, measured by rods or acres. They intend nothing less than to save the owner from suffering in his property or estate, by reason of this setting aside of his right of property,—as far as compensation in money can go,—under the rules of law applicable to such cases." Bangor & Piscataquis R. Co. *v.* McComb (1872), 60 Me. 290, 296, 297.

[300] Manila Railroad Co. *v.* Rodriguez (1909), 13 Phil. 347; Manila Railroad Co. *v.* Fabie (1910), 17 Phil. 206; City of Manila *v.* Estrada (1913), 25 Phil. 208; Manila Railroad Co. *v.* Velasquez (1915), XIII O. G. 2216.

[301] City of Manila *v.* Estrada, *id.;* Manila Railroad Co. *v.* Velasquez, *id.*

[302] City of Manila *v.* Corrales (1915), XIV O. G. 53.

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market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? . . . As a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future." [303] The market value of property, generally speaking, is the price which it will bring when it is offered for sale by one who desires but is not obliged to sell it, and is paid by one who is under no necessity of buying it.[304] "When we speak of the market value of property taken under the power of eminent domain, we mean the value which purchasers generally would pay for it. We do not mean that a purchaser would pay who had no particular object in view in purchasing, and no definite plan as to the use to which to put it. The owner has a right to its value for the use for which it would bring the most in the market." [305] Later, in the same case, Mr. Justice Johnson, emphasizing his words by italics, continues: "In determining the value of land appropriated for public purposes, *the same considerations are to be regarded as in a sale of property between private parties. The inquiry, in such cases, must be* what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to

[303] Mississippi and Rum River Boom Co. *v.* Patterson (1879) 98 U. S. 403, 407, 408, 25 L. Ed. 206, followed in the Estrada, Velasquez and Corrales cases.

[304] Lewis on Eminent Domain, 2d Ed., par. 478, followed in City of Manila *v.* Estrada, *id.*, and Manila Railroad Co. *v.* Velasquez, *id.*

[305] City of Manila *v.* Corrales, *id.* Definitions of "Market Value" also given in Macondray & Co., Inc., *v.* Sellner (1916), XIV O. G. 520.

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the uses to which it is plainly adapted, that is to say, what is it worth from its availability for valuable uses?" The prices of approximately coeval date in the immediate vicinity paid by one who is desirous but not obliged to sell to one who is desirous but not obliged to buy are admissible.[306] The assessed valuation of the land in question is competent evidence but is at best of little value.[307] The commissioners can, and usually do, view the premises to understand and determine the weight of conflicting evidence.[308] Consequential damages in connection with the consequential benefits to the remainder of the property not taken constitute the second question to be decided. "In making this estimate, there must be excluded from consideration those benefits which the owner receives only in common with the community at large in consequence of his ownership of other property, and also those incidental injuries to other property, such as would not give to other persons a right to compensation; while allowing those which directly affect the value of the remainder of the land not taken, such as the necessity for increased fencing, and the like." [309] In this jurisdiction, actual payment or tender before taking is not necessary.[310]

§ 130. Police power.[311]—"The police power and the right to exercise it," said Mr. Justice Johnson in United States *v.* Gomez,[312] "constitute the very foundation, or at least one of the cornerstones of the State." The United

[306] City of Manila *v.* Estrada, *Id.*

[307] Tenorio *v.* Manila Railroad Co. (1912), 22 Phil. 411.

[308] City of Manila *v.* Estrada, *id.;* Manila Railroad Co. *v.* Velasquez, *id.*

[309] Cooley's Constitutional Limitations, 7th Ed., p. 823.

[310] Manila Railroad Co. *v.* Paredes (1915), XIV O. G. 152.

[311] See generally Freund on Police Power; Cooley's Constitutional Limitations, 7th Ed. Ch. XVI; 6 R. C. L. pp. 183-244; Burgess' Political Science and Constitutional Law, Vol. I, pp. 214-216 (historical development).

[312] XIII O. G. 1628, 1629 (1915).

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States Supreme Court tritely describes it as "the most essential of powers, at times the most insistent and always one of least limitable of the powers of government." [313] The police power is a necessary attribute of every civilized government, inherent in sovereignty, existing independent of the written constitution. There is no reason to doubt that the police power exists in the Philippines in the central government, and by delegation to municipalities, in the same form and to the same extent as in any State of the American Union. In fact, our Supreme Court has held on both reason and authority "that in this jurisdiction the provisions of the Act of Congress of July 1, 1902, were not intended to have the effect, and did not have the effect, of denying to the Government of the Philippine Islands the right to exercise the sovereign police power in the promotion of the 'general welfare' and the 'public interest.'" [314] Carrying the principle further in a later case, Mr. Justice Trent said: "There can be no doubt that the exercise of the police power of the Philippine Government belongs to the Legislature and that this power is limited only by the Acts of Congress and those fundamental principles which lie at the foundation of all republican forms of government." [315]

Any attempt to define the police power satisfactorily would be pedantic and superfluous. It is not susceptible of circumstantial precision.[316] Yet it must be admitted that many attempts at definition have been made. It has been defined as the power of government, inherent in every sovereign, to the extent of its dominions (License Cases,

[313] District of Columbia *v.* Brook (1909), 214 U. S. 138, 149, 53 L. Ed. 941.

[314] U. S. *v.* Toribio (1910), 15 Phil. 85; Punzalan *v.* Ferriols (1911), 19 Phil. 214.

[315] Churchill *v.* Rafferty (1915), XIV O. G. 383, 388.

[316] Eubank *v.* City of Richmond (1912), 226 U. S. 137, 57 L. Ed. 156.

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5 How. 483); the power vested in the legislature to make such laws as they shall judge for the good of the state and its subjects (Commonwealth *v.* Alger, 7 Cush. (Mass.) 53, 85); the power to govern men and things, extending to the protection of lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state (Thorpe *v.* Rutland, etc. Co., 27 Vt. 140, 149); the power to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity. (Barbier *v.* Connolly, 113 U. S. 27.)[317]

The police power is based on the Latin maxims: *Salus populi suprema est lex*—The welfare of the people is the first law—and *Sic utere tuo ut alienum non laedas*—So use your own as not to injure another's property.[318] Its source is the social compact by which an individual must part with some rights and privileges for the common good.[319] "Every citizen of every community, in civilized society, must bear certain burdens imposed for the good of all."[320] "We think it is a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. . . . Rights of

[317] See U. S. *v.* Pompeya (1915), XIII O. G. 1684; Churchill *v.* Rafferty (1915), XIV O. G. 383; 6 R. C. L. pp. 185-187.

[318] Broom's Legal Maxims, 8th Ed. p. 365; 6 R. C. L. 187. See Tidewater Ry. Co. *v.* Shartzer (1907) 107 Va. 562, 567, 17 L.R.A. (N. S.) 1053.

[319] Munn *v.* Illinois (1877), 94 U. S. 113, 24 L. Ed. 77.

[320] Case *v.* Board of Health (1913), 24 Phil. 250, 278.

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property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." [321] It is exercisable largely to secure reform in morals, sanitation, or safety, to prevent fraud, to protect the people against the consequences of incapacity or ignorance, to promote the general welfare, and to conserve the natural resources.[322] Its realm is to guard against abuse of individual liberty.[323] Since the boundary line can not be determined by any general formulæ in advance, recourse has been had to the gradual process of judicial inclusion and exclusion.[324] In a general way, the police power may be said to extend to all the great public needs.[325] To quote briefly from decisions of the United States Supreme Court, there seems to be no doubt that it extends "to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals." [326] "The police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, public morals or the public safety." [327] "The police power is not confined to the suppression of what is offensive, disor-

[321] Commonwealth *v.* Alger (1851), 7 Cush. 53, 84, quoted with approval in Fabie *v.* City of Manila (1912), 21 Phil. 486, 493; U. S. *v.* Villareal (1914), 28 Phil. 390.

[322] Stimson, Popular Law-Making, pp. 142-145; 6 R. C. L. pp. 206-212; 8 Cyc. pp. 866 *et seq.*

[323] Burgess' Political Science and Constitutional Law, Vol. I, p. 216.

[324] 6 R. C. L. p. 187.

[325] Camfield *v.* U. S. (1897), 167 U. S. 518, 42 L. Ed. 260; Noble State Bank *v.* Haskell (1911), 219 U. S. 104, 55 L. Ed. 112.

[326] Beer Co. *v.* Massachusetts (1878), 97 U. S. 25, 24 L. Ed. 989.

[327] Chicago, B. & Q. R. Co. *v.* Illinois (1906), 200 U. S. 561, 592,

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derly, or insanitary," but "extends to so dealing with the conditions which exist in the state as to bring out of them the greatest welfare of its people." [328] Mr. Justice Johnson, delivering the opinion of the Supreme Court of the Philippines, said: "The police power of the state may be said to embrace the whole system of internal regulation, by which the state seeks not only to preserve public order and to prevent offenses against the state, but also to establish for the intercourse of citizen with citizen, those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent, with a like enjoyment of the rights of others. The police power of the State includes not only the public health and safety, but also the public welfare, protection against impositions and generally the public's best interest." [329] In another case the same Justice said: "The police power of the State extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within its borders. Under the general police power of the State, persons and property are subjected to all kinds of restrictions and burdens in order to secure the general health, comfort, and prosperity of all." [330]

In addition to various powers which fall under the name of "police power" and which ordinarily are spe-

50 L. Ed. 596, followed in Eubank *v.* Richmond (1912), 226 U. S. 137, 57 L. Ed. 156.

[328] Bacon *v.* Walker (1907), 204 U. S. 311, 318, 51 L. Ed. 499. See 6 R. C. L. p. 203.

[329] U. S. *v.* Pompeya (1915), XIII O. G. 1684, 1686.

[330] U. S. *v.* Gomez (1915), XIII O. G. 1628, 1630. "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded

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cifically enumerated in the statute, general grants of police powers to municipal corporations are frequently referred to as the "general welfare clause" of the municipal charter in which they are found.[331] Under such provisions, a municipality by virtue of its police power may adopt ordinances to secure the peace, safety, health, morals, and the best and highest interests of the municipality.[332] General welfare clauses have, under the police power of a state, been given wide application by municipal authorities, and have in their relation to the particular circumstances of the case been liberally construed by the courts.[333] But the power is limited by the purpose for which it is granted; that is to regulations for peculiarly local needs.[334] And ordinances passed in virtue of the implied power must be reasonable, consonant with the general powers and purposes of the corporation, and not inconsistent with the laws or policy of the State.[335]

This all pervading power rises superior even to the constitutional provision regarding obligation of contracts; even a constitutional provision is not designed to interfere with it.[336] The familiar rule is that this power, or the right to exercise it, cannot be bargained away by the

as a public nuisance." Lawton *v.* Steele (1894), 152 U. S. 133, 136, 38 L. Ed. 385, quoted in U. S. *v.* Toribio (1910), 15 Phil. 85, 97. See also Case *v.* Board of Health (1913), 24 Phil. 250.

[331] See U. S. *v.* Pacis (1915), XIII O. G. 1778.

[332] Case *v.* Board of Health (1913), 24 Phil. 250.

[333] IV Op. Atty. Gen. P. I. 675.

[334] Elliott, Municipal Corporations, 2d Ed., p. 49.

[335] Dillon's Municipal Corporations, 5th Ed. Vol. I, sec. 580; U. S. *v.* Abendan (1913), 24 Phil. 165; U. S. *v.* Chan Tienco (1913), 25 Phil. 89. See generally Malcolm's Compiled Municipal Code, pp. 119 *et seq.*

[336] New Orleans Gaslight Co. *v.* Louisiana Light and Heat Producing and Mfg. Co. (1885), 115 U. S. 650, 29 L. Ed. 516; Barbier *v.* Connolly (1885), 113 U. S. 27, 28 L. Ed. 923.

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State.[337] The right is a continuing one. For example, a business lawful to-day may, in the future, because of the changed situation, the growth of population, or other causes, become a menace to the public health and welfare, and be required to yield to the public good.[338]

The police power finds reason for its exercise in many directions, some to be found discussed in other sections of this chapter.[339] Thus "the police power of the state has been exercised in controlling and regulating private business, even to the extent of the destruction of the property of private persons, when the use of such property became a nuisance to the public health and convenience." [340] No longer is the State's interference with the use of private property confined to the suppression of nuisances. The quarantine, isolation, and even the slaughter of cattle suffering from infectious or contagious diseases are universally recognized as typical examples of the proper exercise of this power, in any case where the controlling public necessity for the checking of the ravages of such disease demands such interference with or destruction of the property of individuals, and provided the means adopted are reasonably necessary for the accomplishment which it is sought to attain.[341] The Supreme Court of the Philippines, in a bold and pioneer spirit on which it is to be congratulated, will even extend the power to cover statutes prompted and inspired by

[337] Case *v.* Board of Health (1913), 24 Phil. 650; U. S. *v.* Gomez (1915), XIII O. G. 1628.

[338] Dobbins *v.* Los Angeles (1904), 195 U. S. 223, 238, 49 L. Ed. 169.

[339] See 6 R. C. L. pp. 217 *et seq.*

[340] U. S. *v.* Pompeya (1915), XIII O. G. 1684, citing cases. See to same effect Fabie *v.* City of Manila (1912), 21 Phil. 486 and U. S. *v.* Gomez (1915), XIII O. G. 1628.

[341] Punzalan *v.* Ferriols (1911), 19 Phil. 214, 221. See on Nuisances, Iloilo Cold Storage Co. *v.* Municipal Council of Iloilo (1913), 24 Phil. 471.

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esthetic considerations.[342] The court's view in the case in which it arrived at this conclusion was that it is not the adoption of a new principle, but merely the extension of a well-established principle to hold that the police power may regulate and restrict uses of private property (billboards) when devoted to advertising which is offensive to the sight. Passing on to subjects, other than property, in Smiley *v.* Kansas, the United States Supreme Court said: "Undoubtedly there is certain freedom of contract which cannot be destroyed by legislative enactment. In pursuance of that freedom, parties may seek to further their business interests, and it may not be always easy to draw the line between those contracts which are beyond the reach of the police power, and those which are subject to prohibition or restraint. But a secret arrangement, by which, under penalties, an apparently existing competition among all the dealers in a community in one of the necessaries of life is substantially destroyed, without any merging of interests through partnership or incorporation, is one to which the police power extends."[343] Reasonable regulations for determining the qualifications of those engaged in the practice of Medicine and Surgery, Dentistry, Pharmacy, Law, and other professions, and in the trades of Plumbing, Horseshoeing, Barbering, etc., and punishing those who attempt to engage therein in defiance of such provisions are constitutional.[344] The right of the State to regulate reasonably

[342] Churchill *v.* Rafferty (1915), XIV O. G. 383.

[343] 196 U. S. 447, 457, 49 L. Ed. 546 (1905); Grenada Lumber Co. *v.* Mississippi (1910), 217 U. S. 433, 440, 54 L. Ed. 826.

[344] U. S. *v.* Gomez (1915), XIII O. G. 1628, citing many cases including Dent *v.* West Virginia (1889), 129 U. S. 114, 32 L. Ed. 623; Hawker *v.* New York (1898), 170 U. S. 189, 42 L. Ed. 1002; and Reetz *v.* Michigan (1903), 188 U. S. 505, 47 L. Ed. 563. The court also uses the following well-chosen language: "The trade of plumbing vitally affects the health of the people. The lives of thousands of people may depend upon the result of the work of an engineer.

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certain occupations which may become unsafe or dangerous when unrestrained with a view to promote the public health and welfare has been often decided.[345] The power to regulate the carrying on of certain lawful occupations in a State includes the power to confine the carrying on of the same to certain limits whenever such restriction may reasonably be found necessary to subserve the ends for which the police power exists.[346] The mode of payment of wages, as by requiring payment in cash, can be regulated.[347] Laws prohibiting the employment of adult males for more than a stated number of hours per day or week are not valid unless reasonably necessary to protect the public health, safety, morals or general welfare, because the right to labor or employ labor on such

The property and life of citizens of the state may depend upon the advice of a lawyer, and no profession or trade is more directly connected with the health and comfort of the people than that of a physician and surgeon. The practice of medicine and surgery is a vocation which very nearly concern the comfort, health, and life of every person in the land. Physicians and surgeons have committed to their care most important interests, and it is of almost imperious necessity that only persons possessing skill and knowledge shall be permitted to practice medicine and surgery. For centuries the law has required physicians to possess and exercise skill and learning. Courts have not hesitated to punish those who have caused damages for lack of such skill and learning. The requirement of the Philippine Legislature that those who may engage in such professions shall be possessed of both knowledge and skill before entering the same, is no new principle of law. It is an exercise of the right of the State, under its police power, which has been recognized for centuries. No one can doubt the great importance to the community that health, life, and limb should be protected and should not be left in the hands of ignorant pretenders, and secure them the services of reputable, skilled, and learned men."

[345] People *v.* Van de Carr (1905), 199 U. S. 552, 50 L. Ed. 305.

[346] *Ex parte* Quong Wo (1911), 161 Cal. 220, 118 Pac. 714; Crowley *v.* Christensen (1890), 137 U. S. 90, 34 L. Ed. 620.

[347] Stimson, Popular Law-Making, Ch. XI, p. 236. See Act 2549 of the Philippine Legislature.

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terms as may be agreed upon is a liberty or property right guaranteed to such persons by the Constitution and with which the state cannot interfere.[348] It is competent, however, for the state to forbid the employment of children in certain callings, merely because it believes such prohibition to be for their best interests, although the prohibited employment does not involve a direct danger to morals, decency, or of life or limb.[349] "All the decisions rest upon the proposition that the State in its sovereign power has the right, when necessary to substitute itself as guardian of the person of the child for that of the parent

[348] Lochner *v.* New York (1905), 198 U. S. 45, 49 L. Ed. 937; State *v.* Shorey (1906), 48 Or. 396, 398, 24 L. R. A. (N. S.) 1121. Compare with the authoritative article by Professor Frankfurter, Hours of Labor and Realism in Constitutional Law, XXIX Harvard Law Review, Feb., 1916, p. 353. See generally John R. Commons, Principles of Labor Legislation, pp. 237-246.

[349] State *v.* Shorey, *id.* Mr. Freund, in his work on Police Power, sec. 259, says: "The constitutionality of legislation for the protection of children or minors is rarely questioned; and the Legislature is conceded a wide discretion in creating restraints."

"As to children there is, of course, no question. Laws limiting their labor are perfectly constitutional, and some child-labor laws exist already in all States and Territories except Nevada. . . . Undoubtedly climatic effects, social conditions, and dozens of other reasons make it difficult, if not unwise, to attempt to have the same rules as to hours of labor in all the States of our wide country. . . . And the age limit fixed for such employment is (without regard to schooling) under twelve, in Idaho and Maryland; under fourteen in Delaware, Illinois, and Wisconsin; and under fourteen for boys and sixteen for girls in Washington, if without permit, and under fifteen, for more than sixty days without the consent of the parent or guardian in Florida; in other States the prohibition rests on educational reasons, and covers only the time of year during which schools are in session; thus, under eight during school hours, or fourteen without certificate (Missouri); under fourteen during the time or term of school sessions (Connecticut, Colorado, Massachusetts, Idaho, Kansas, Kentucky, Minnesota, New York, North Dakota); or under fourteen during actual school hours (Arizona, Kentucky, Nebraska, Oregon); or under fifteen in Washington, and

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or other legal guardian, and thus to educate and save the child from a criminal career; that it is the welfare of the child that moves the state to act, and not to inflict punishment or to mete out retributive justice for any offense committed or threatened. In other words, to do that which it is the duty of the father or guardian to do and which the law assumes he will do by reason of the love and affection he holds for his offspring and out of regard for the child's future welfare." [350] The state, in the exercise of its police power, has the undoubted right to provide for the detention and treatment in hospitals controlled by it of those who are habitual drunkards. "The state has the power to reclaim submerged lands, which are a menace to the public health, and make them fruitful. Has it not, also, the power to reclaim submerged men, overthrown by strong drink, and help them to regain self-control?" [351] The social evil can be controlled; municipalities have authority to make reasonable regulations confining houses of prostitution to a specified district and providing for medical inspection of the inmates.[352] The foregoing naturally are merely illustrations of equally strong facts which can be found in literally thousands of cases.[353]

under sixteen as to those who cannot read and write (Colorado, Connecticut, Illinois) or have not the required school instruction (Idaho, New York), or during school hours (Arkansas, Montana), or who have not a labor permit (Maryland, Minnesota, Wisconsin)." Stimson, Popular Law-Making, Ch. XI, pp. 215, 222.

[350] Mill *v.* Brown (1907), 31 Utah, 473, 482, 120 Am. St. Rep. 935. See also *In re* Sharp (1908), 15 Idaho, 120, 18 L.R.A. (N. S.) 886.

[351] Leavitt *v.* City of Morris (1908), 105 Minn. 170, 17 L. R. A. (N. S.) 984.

[352] V Op. Atty. Gen. P. I. 656; L'Hote *v.* New Orleans (1900), 177 U. S. 587, 44 L. Ed. 899.

[353] Churchill *v.* Rafferty (1915), XIV O. G. 383 gives these examples: Laws providing for the regulation of wages and hours of labor of coal miners (Rail & River Coal Co. *v.* Ohio Industrial Commission, 236 U. S. 338); prohibiting the payment of wages in company

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Necessarily the police power has its limits. It must stop when it clashes with the prohibitions of the Constitution (except the obligation of contracts clause).[354] Nevertheless, the constitutional limitations allow a wide range of judgment.[355] Says our Supreme Court: "An Act of the Legislature which is obviously and undoubtedly foreign to any of the purposes of the police power

store orders (Keokee Coke Co. *v.* Taylor, 234 U. S. 224); requiring payment of employees of railroads and other industrial concerns in legal tender and requiring salaries to be paid semi-monthly (Erie R. R. Co. *v.* Williams, 233 U. S., 685); providing a maximum number of hours of labor for women (Miller *v.* Wilson, 236 U. S. 373, 59 L. Ed. 628, L. R. A. 1915 F, 829, 35 Sup. Ct. Rep. 342); prohibiting child labor (Sturges & Burn *v.* Beauchamp, 231 U. S., 320); restricting the hours of labor in public laundries (*In re* Wong Wing, 167 Cal. 109); limiting hours of labor in industrial establishments generally (State *v.* Bunting, 71 Ore., 259); Sunday Closing Laws (State *v.* Nichols (Ore., 1915), 151 Pac. 473; People *v.* Clinck Packing Co. (N. Y., 1915), 108 N. E., 278; Hiller *v.* State (Md., 1914), 92 Atl., 842; State *v.* Penny, 42 Mont., 118; City of Springfield *v.* Richter, 257 Ill., 578, 580; State *v.* Hondros (S. C., 1915), 84 S. E., 781); have all been upheld as a valid exercise of the police power. Again, workmen's compensation laws have been quite generally upheld. These statutes discard the common law theory that employers are not liable for industrial accidents and make them responsible for all accidents resulting from trade risks, it being considered that such accidents are a legitimate charge against production and that the employer by controlling the prices of his product may shift the burden to the community. Laws requiring state banks to join in establishing a depositors' guarantee fund have also been upheld by the Federal Supreme Court in Noble State Bank *v.* Haskell (219 U. S., 104), and Assaria State Bank *v.* Dolley (219 U. S., 121). Offensive noises and smells have been for a long time considered susceptible of suppression in thickly populated districts. Barring livery stables from such locations was approved of in Reinman *v.* Little Rock (U. S. Sup. Ct., Apr. 5, 1915, U. S. Adv. Ops., p. 511).

[354] Eubank *v.* City of Richmond (1912), 226 U. S. 137, 57 L. Ed. 156; Leisy *v.* Hardin (1890), 135 U. S. 100, 34 L. Ed. 128; McKeon *v.* N. Y. & N. H. R. R. Co. (1902), 75 Conn. 343, 61 L. R. A. 736.

[355] Mutual Loan Co. *v.* Martel (1911), 222 U. S. 225, 233, 56 L. Ed. 175.

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and interferes with the ordinary enjoyment of property would, without doubt, be held to be invalid. But where the Act is reasonably within a proper consideration of and care for the public health, safety, or comfort, it should not be disturbed by the courts. The courts cannot substitute their own views for what is proper in the premises for those of the Legislature." [356] Because there exist few scientifically certain criteria of legislation and because it is difficult to delimit the boundaries of the police power, judges are slow to pronounce general welfare statutes invalid.[357] "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." [358] In the leading case of Lawton *v.* Steele, quoted with approval by our Supreme Court, it was said that *"a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.* (Barbier *v.* Connolly, 113 U. S., 27; Kidd *v.* Pearson, 128 U. S. 1.) To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the

[356] Churchill *v.* Rafferty (1915), XIV O. G. 383.

[357] Noble State Bank *v.* Haskell (1911), 219 U. S. 104, 55 L. Ed. 112.

[358] Jacobson *v.* Massachusetts (1905), 197 U. S. 11, 49 L. Ed. 643, followed in Case *v.* Board of Health (1913), 24 Phil. 250.

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means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations." [359] Arbitrary, unjust, or unreasonable interference with freedom of action and use of property is not permissible. The general rule is that police regulations must be reasonable under all circumstances.

After all "it is much easier to perceive and realize the existence and sources of this power, than to mark its boundaries, or prescribe limits to its exercise." [360] Consequently, every case claimed to come under the police power must be decided on its merits as it arises. The validity of a police regulation must depend on the circumstances of the case and the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public purpose.[361]

§ 131. Various fundamental privileges and immunities protect the individual against the arbitrary use of the great forces of government just described. Duties and rights are fairly reciprocal.

Some of these privileges and immunities of the individual are the natural rights of men. Others are inalienable. All are fundamental. Some can be classified as civil rights and others as political rights. We present a partial list which belongs inherently to the citizens of all free governments, only stopping to say a word of those which find no place in the following sections.

[359] 152 U. S. 133 (1894), quoted in U. S. *v.* Toribio, 15 Phil. 85, 97, italics those of court and followed in U. S. *v.* Villareal (1914), 28 Phil. 390.

[360] Commonwealth *v.* Alger (1851), 7 Cush. 53.

[361] Chicago, B. & Q. R. Co. *v.* Illinois (1906), 200 U. S. 561, 592, 50 L. Ed. 596; Churchill *v.* Rafferty (1915) XIV O. G. 383.

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Among the rights are protection by the government; the enjoyment of life, liberty, and property; the pursuit of happiness; access to the courts; freedom of labor; freedom of speech; religious freedom; right of personal security; right to reputation; right to health; right to vote; right to an education; right to local government; and right to contract.[362] "The right to follow any of the common occupations of life is an inalienable right." [363]

[362] See Kalaw, *Teorias Constitucionales,* Ch. XV; Corfield *v.* Coryell (1823), 4 Wash. C. C. 371, Fed. Cas. No. 3,230.

[363] Butchers Union Slaughterhouse Co. *v.* Crescent City Livestock Landing Co. (1884), 111 U. S. 746, 762, 28 L. Ed. 585. "It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the 'estate,' acquired in them—that is, the right to continue their prosecution—is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. But there is no arbitrary deprivation of such right where its exercise is not permitted because of a failure to comply with conditions imposed by the state for the protection of society. The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity, as well as of deception and fraud. As one means to this end it has been the practice of different states, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely; their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal." Dent *v.* West Virginia (1889), 129 U. S. 114, 121, 32 L. Ed. 623. See U. S. *v.* Gomez (1915), XIII O. G. 1628.

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Liberty of contract relating to labor embraces the right to sell one's own labor or to make contracts for the labor of others, subject to the condition that no contract inconsistent with the public interest or hurtful to the public order or detrimental to the common good, can be sustained; it includes both parties to it.[364] The right to love and marry is ardently asserted, but may be contracted only under such reasonable conditions as the legislature may see fit to impose.[365]

Only in time of war or great danger could these and other constitutional immunities of individuals be suspended.[366]

§ 132. Rights of accused in criminal prosecutions.[367]

Philippines.	*United States.*
"That in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and	"Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in

[364] Adair *v.* U. S. (1908), 208 U. S. 161, 52 L. Ed. 436; Lochner *v.* New York (1905), 198 U. S. 45, 49 L. Ed. 937; Bailey *v.* Alabama (1911), 219 U. S. 219, 55 L. Ed. 191.

[365] "To-day we witness the startling tendency for the States to prescribe whom a person shall *not* marry, even if it do not prescribe whom they shall." Stimson, Popular Law-Making, Ch. XVII, p. 327. "One of these is the right to contract marriage, but it is a right that can only be exercised under such reasonable conditions as the Legislature may see fit to impose." Gould *v.* Gould (1905), 78 Conn. 232, 243-245, 265, 266, 267, 61 Atl. 604, 2 L. R. A. (N. S.) 531. The cases discussing the validity of various legislative restrictions upon marriage are collected in 2 L. R. A. (N. S.) 531-536 (1906).

[366] Burgess, Political Science and Constitutional Law, Vol. I, pp. 245 *et seq.*

[367] See generally Cooley's Constitutional Limitations, 7th Ed. pp. 436 *et seq;* Willoughby on the Constitution, Vol. II, pp. 815 *et seq;* Burgess, Political Science and Constitutional Law, Vol. I, pp. 185 *et seq;* Bishop's New Criminal Procedure, 2d Ed.; 8 R. C. L., pp. 67 *et seq.*

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cause of the accusation, to be confronted with the witnesses against him, to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defense; . . . that no person shall be put twice in jeopardy for the same offense or be compelled in any criminal case to be a witness against himself." (President's Instructions to the Philippine Commission.)

"That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf." (Philippine Bill, sec. 5, par. 2.)

"That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself." (Philippine Bill, sec. 5, par. 3.)

"That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses." (Philippine Bill, sec. 5, par. 4.)

any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law."[868] (United States Constitution, fifth amendment, portion.)

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence." (United States Constitution, sixth amendment, portion.)

(State Constitutions.)

[868] The requirement of the fifth amendment that infamous crimes must be presented by indictment of a grand jury has no application to the Philippine Islands. Dowdell *v.* U. S. (1911), 221 U. S. 325, 55 L. Ed. 753 and other cases.

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"That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf." (Philippine Autonomy Act, sec. 3, par. 2.)

"That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself." (Philippine Autonomy Act, sec. 3, par. 3.)

"That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses." (Philippine Autonomy Act, sec. 3, par. 4.)

General Orders, No. 58, the Code of Criminal Procedure, carries the above constitutional provisions into effect. The codes also enumerate the rules of evidence. The principles of Criminal Procedure, Evidence, and other subjects are studied in the appropriate courses. We confine ourselves here almost exclusively to constitutional phases.

Right to hearing.

"In all criminal prosecutions the defendant shall be entitled:

"To appear and defend in person and by counsel at

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every stage of the proceedings." (Code of Criminal Procedure, sec. 15 (1).)

"If the charge is for a felony (*delito*), the defendant must be personally present at the arraignment; but if for a misdemeanor (*falta*), he may appear by counsel." (Code of Criminal Procedure, sec. 16, last sentence.)

In Diaz *v.* United States [369] it was objected that the accused was wrongfully convicted in that the trial proceeded in part in his absence. After quoting provisions of the Code of Criminal Procedure, including section 15, paragraph 1, appearing above, the United States Supreme Court by Mr. Justice Van Devanter said "that the effect of these sections, when their differing terms are considered, is to make the presence of the accused indispensable at the arraignment, at the time the plea is taken, if it be one of guilt, and when judgment is pronounced, and to entitle him to be present at all other stages of the proceedings, but not to make his presence thereat indispensable." (p. 454.) Then passing on to consider the constitutional provisions securing to the accused in all criminal prosecutions "the right to be heard by himself and counsel," the court, citing many cases including Barton *v.* State, 67 Ga. 653, 44 Am. Rep. 743, and Falk *v.* United States, 180 U. S. 636, 45 L. Ed. 709, said: "In cases of felony our courts, with substantial accord, have regarded it (the right to be present) as extending to every stage of the trial, inclusive of the empaneling of the jury and the reception of the verdict, and as being scarcely less important to the accused than the right of trial itself. And with like accord they have regarded an accused who is in custody and one who is charged with a capital offense as incapable of waiving the right; the one, because his presence or absence is not within his own control; and the other, because, in addition to being usually in custody, he is

[369] 223 U. S. 442, 56 L. Ed. 500 (1912).

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deemed to suffer the constraint naturally incident to an apprehension of the awful penalty that would follow conviction. But, where the offense is not capital and the accused is not in custody, the prevailing rule has been that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present, and leaves the court free to proceed with the trial in like manner and with like effect as if he were present." (p. 455.) Consequently, in this particular case, there being no infringement of the rights of the accused, it was held that: 1. The voluntary absence of the accused when his presence is not made indispensable by the court, coupled with an express consent that the trial go on in the presence of his counsel, is a waiver of his right to be present at every stage of the trial; and 2. One accused of an offense not capital, who is not in custody, and who was present when the trial was begun, may waive his right under the Philippine Organic Law to be personally present at every stage of the trial.

It is much safer to stop here than to attempt to reconcile prior Philippine decisions (although the author believes this can be done) with the views of the United States Supreme Court.[370] A later Philippine case, United

[370] Compare with U. S. *v.* Karelsen (1904), 3 Phil. 223 holding: "The requirement of the law that the accused be present personally at the time of pronouncing judgment if convicted of a felony is mandatory, and in case of a failure to comply therewith the sentence will be reversed, without disturbing the verdict, and the cause remanded with instructions to the court below to pronounce judgment in accordance with the provisions of the statute;" with U. S. *v.* Palisoc (1905), 4 Phil. 207, holding: "A sentence convicting a defendant for felony will be reversed where it is shown that sections 16, 17, and 18 of General Orders, No. 58, have not been complied with;" and with U. S. *v.* Baluyot (1905), 5 Phil. 129, 133, in which Mr. Justice Willard asks: "If the legislature of a State whose constitution con-

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States *v.* Beechem, was of the opinion that, upon the authority and reasoning of various courts of last resort in the United States, construing similarly worded constitutional and statutory provisions touching the rights of the accused personally to be present in the course of criminal proceedings instituted against them, "there can be no question that the language of the Philippine Bill of rights in which it secures to the accused the right to be heard by himself and counsel in all criminal prosecutions, and the language of General Orders, No. 58, which secures to the accused the right 'at the trial' to be present in person and by counsel at every stage of the proceedings, and specifically 'at the time of pronouncing judgment,' must be understood to be limited to the proceedings in the trial court, that is to say the Court of First Instance, and to extend only to the actual trial therein, and not to appellate proceedings or to proceedings subsequent to the entry of final judgment looking merely to the execution of the sentence." [371]

Some of the tests, therefore, are whether the proceedings are in the trial court or the appellate court, whether a right indispensable or not to the accused, whether a felony or a misdemeanor, and whether a capital offense

tained provisions similar to those contained in said section 5, should pass a law saying distinctly that the prisoner in a case of felony should not be entitled to be present upon the hearing of a demurrer or a motion for a new trial, or when the verdict of the jury was pronounced, or when the penalty was declared by the judge, would such legislation be constitutional?" His answer was: "The right of the prisoner to be present at any one of these stages is not in terms secured by any one of the provisions contained in said section 5, and the right to be so present does not seem to be an essential ingredient of that due process of law which is guaranteed by said constitutional and statutory provisions." The decision in the last case was that Act 867 in providing that a judge need not be present when the judgment is pronounced is valid.

[371] 23 Phil. 258, 274 (1912).

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where the accused can not waive the right or not capital where it can be.

Nature and cause of accusation.

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * * *

"To be informed of the nature and cause of the accusation." (Code of Criminal Procedure, sec. 15, (2).)

The Code of Criminal Procedure elaborates on the constitutional provision. Public offenses must be prosecuted by complaint or information (sec. 3). The sufficiency of a complaint or information is provided for (sec. 6), but is not insufficient by reason of a defect in matter of form "which does not tend to prejudice a substantial right of the defendant upon the merits" (sec. 10). The defendant must be arraigned (sec. 16). These and other sections of the Code have been often construed by the Philippine courts. Invariably they have held that a complaint is not defective when the charge is so stated as to enable a person of common understanding to know what is intended.[372] In Paraiso *v.* United States [373] the United States Supreme Court held that a complaint sufficiently clear to the mind of a person of rudimentary intelligence as to what the defendant is charged with, informs the accused of the nature and cause of the accusation against him, and a conviction thereunder is not in that respect without due process of law under the Philippine Bill of Rights. In the course of the opinion, Mr. Justice Holmes made this pertinent remark: "The bill of rights for the Philippines giving the accused the right to demand the nature and cause of the accusation against him does not fasten forever upon those Islands the in-

[372] See for example U. S. *v.* Sarabia (1905), 4 Phil. 566.
[373] 207 U. S. 368, 52 L. Ed. 249, 11 Phil. 799 (1907).

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ability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert."

Speedy and public trial.

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * * *

"To have a speedy and public trial." (Code of Criminal procedure, sec. 15 (7).)

A speedy trial is one conducted according to fixed proceedings of law, free from vexatious, capricious, and oppressive delays.[374] Unreasonable delays in the trial of accused persons can not be tolerated. But impossibilities are not to be exacted. Certain postponements made necessary by the ordinary procedure are permissible.

As to the nature of a speedy trial, we can do no better than to quote from an opinion of the Supreme Court of Montana releasing a person on habeas corpus, because of a denial of his constitutional right to a speedy trial, namely:

"Among the principles that adorn the common law, making it the pride of all English speaking people, and a lasting monument to the achievements of liberty over the encroachments of arbitrary power, are the following: No man can be rightfully imprisoned except upon a charge of crime properly made in pursuance of the law of the land. No man, when so imprisoned upon a lawful charge presented in a lawful manner, specifying the crime can be arbitrarily held without trial.

"These principles are in accord with the enlightened spirit of the common law, and form a part of the frame work of the English constitution. They are guaranteed

[374] See 8 R. C. L. pp. 70-75.

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and secured by Magna Charta, the petition of rights, the Bill of Rights and by a long course of judicial decisions, and they belong to us as a part of inheritance from the mother country. These rights were claimed by our ancestors in Colonial times, and they have been engrafted into and secured by our constitution the supreme law of the land. . . .

"The speedy trial, to which a person charged with a crime is entitled under the constitution, is then, a trial at such time, after the finding of indictment, regard being had to the terms of court, as shall afford the prosecution a reasonable opportunity, by the fair and honest exercise of reasonable diligence, to prepare for trial; and if the trial is postponed or delayed beyond such period, when there is a term of court at which the trial might be had by reason of the neglect or laches of the prosecution in preparing for trial, such a delay is a denial to the defendant of his right to a speedy trial. . . .

"The prosecution was guilty of laches and a neglect of duty, in so failing and refusing to prosecute, and such failure was a denial to the defendant of his constitutional right to a speedy trial. The government of the United States cannot cast a man into prison and then fold its arms and refuse to prosecute.

"And it is not material to inquire for what reason the government failed and refused to prosecute these indictments, or why appropriations of money to enable marshals to serve process failed in Congress. The fact is sufficient for the purposes of this case.

"The prayer for the petition is granted and the petitioner discharged from custody and imprisonment." [875]

A public trial is guaranteed in order to see fair play done the accused, and in order to keep his judges alive to

[875] U. S. *v.* Fox (1880), 3 Mont. 512. See also Arrowsmith *v.* State (Tenn.), 175 S. W. 345.

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their responsibilities.[876] Secret trials can, therefore, under ordinary circumstances, not be authorized. But the right to a public trial is not denied when the judge, in his discretion, refuses admission to certain of the public who attend merely out of "purient curiosity," or excludes all spectators because of the nature of the case, as on account of a regard for public morals and public decency.[877]

Meeting witnesses face to face.[878]

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * * *

"To be confronted at the trial by and to cross-examine the witnesses against him. Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the accused or his counsel, the defence having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or cannot with due diligence be found in the Islands." (Code of Criminal Procedure, sec. 15 (5).)

This provision of the Philippine Bill, Mr. Justice Day said in Dowdell *v.* United States, "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or *ex parte* affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exer-

[876] 8 R. C. L. pp. 75-77.
[877] Cooley's Constitutional Limitations, 7th Ed., p. 441.
[878] See generally Wigmore on Evidence, Vol. II, Ch. XLV.

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cise of the right of cross-examination. Mattox *v.* United States, 156 U. S. 237, 242, 39 L. Ed. 409, 410, 15 Sup. Ct. Rep. 337; Kirby *v.* United States, 174 U. S. 47, 55, 43 L. Ed. 890, 893, 19 Sup. Ct. Rep. 574, 11 Am. Crim. Rep. 330; 2 Wigmore, Ev. pars. 1396, 1397." [379] A second and minor purpose, as given by Greenleaf on Evidence, quoted with approval by the Supreme Court of the Philippines, is that a tribunal may have before it the deportment and appearance of a witness while testifying.[380] The Supreme Court of the Philippines applied the main rule by acquitting a defendant, because, in the language of Mr. Justice Mapa, "one of the essential rights of every person charged in a criminal case is that of being present at the trial, hearing the testimony of the witnesses for the prosecution, and cross-examining them (sec. 15, par. 5, General Orders, No. 58), and this right would evidently be violated if the evidence taken in another case, to which he was not a party and in which he has not been heard, were to be considered to his detriment in this case." [381] The Attorney-General and the Supreme Court of the Philippines have many times mentioned the last subsidiary principle concerning the weight to be given the findings of the trial court, because of the fact that it has the opportunity of viewing the witnesses while testifying, in considering cases on appeal where only the record is before them, and the personal equation is lacking.

The constitutional provision did not purport to enumerate all the limitations to the rule. A number of these limitations existed at the time of the adoption of the United States Constitution. The Constitution merely endorsed the general principle of the hearsay rule subject

[379] 221 U. S. 325, 330, 55 L. Ed. 753 (1911).

[380] Greenleaf on Evidence, Vol. I, par. 163, quoted in U. S. *v.* Anastasio (1906), 6 Phil. 413, 416.

[381] U. S. *v.* Bello (1908) 11 Phil. 526, 527.

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to these exceptions.[382] In the Dowdell case Mr. Justice Day continued his opinion as follows: "But this general rule of law embodied in the Constitution, and carried by statute to the Philippines, and intended to secure the right of the accused to meet the witnesses face to face, and to thus sift the testimony produced against him has always had certain well-recognized exceptions. As examples are cases where the notes of testimony of a deceased witness, of which the accused has had the right of cross-examination in a former trial, have been admitted. Dying declarations, although not made in the presence of the accused, are uniformly recognized as competent testimony.

[382] See Greenleaf on Evidence, 16th Ed. Vol. I, par. 163, quoted in U. S. *v.* Gil (1909), 13 Phil. 530, 548, 549, holding: "The American authors of the Philippine Bill and of General Orders, No. 58, must be presumed to have borrowed the provisions of the Constitution of the United States, securing to accused persons the right of confrontation and cross-examination of the witnesses against them, subject to the well-established exceptions which have always been recognized under the rule as laid down by the Constitution of the United States; these provisions were never intended to render inadmissible dying declarations in criminal cases, touching the circumstances leading up to the death for which the prosecution is instituted."

"Section 15 of General Orders, No. 58, provides that in all criminal prosecutions the defendant shall be entitled to be confronted by, and to cross-examine the witnesses against him; and while there are some apparent exceptions to this rule in regard to hearsay testimony, the dying declaration under consideration can not be said to fall under any of these so-called exceptions.

"Dying declarations or affirmations, made not under the sanction of an oath but of a solemn sense of impending death, are sometimes accepted as evidence, though made extra-judicially and without cross-examination, the declarant not being regarded as a witness whom the defendant is entitled to meet face to face; but the admission of such declarations has always been strictly limited to criminal prosecutions for homicide or murder, and must proceed from the very person alleged to have been killed. (Thompson *v.* State, 24 Ga. 297; Gibson *v.* Whiteworth, 1 Fost. & F., 382.) Manifestly, therefore, the ante-mortem statement in this case is not admissible as a dying declaration." U. S. *v.* De la Cruz (1908), 12 Phil. 87, 91.

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Mattox v. United States, *supra.* Documentary evidence to establish collateral facts admissible under the common law, may be admitted in evidence. Cooley, Const. Lim. 2d ed. 450, note; People *v.* Jones, 24 Mich. 224." Consequently, "where a court, upon suggestion of the diminution of the record, orders a clerk of the court below to send up a more ample record, or to supply deficiencies in the record filed, there is no production of testimony against the accused, within the meaning of this provision as to meeting witnesses face to face, in permitting the clerk to certify the additional matter." Always also there may exist no other method of utilizing a witness' knowledge than by resorting to depositions and former testimony.[383] "The net result . . . under the constitutional rule," Dean Wigmore states, "is that, so far as testimony is required under the Hearsay rule to be taken *infra*-judicially, it shall be taken in a certain way, namely, subject to cross-examination,—not secretly or *ex parte* away from the accused. The Constitution does not prescribe what kinds of testimony statements (dying declarations, or the like) shall be given *infra*-judicially—this depends on the law of evidence for the time being—, but only what mode of procedure shall be followed—*i. e.* a cross-examining procedure—in the case of such testimony as is required by the ordinary law of evidence to be given *infra*-judicially." [384]

The right to be confronted with the witnesses in criminal prosecutions as guaranteed by the Philippine Bill of Rights is a personal one and may be waived.[385] In Diaz *v.* United States [386] it was objected that the accused was deprived of the right secured to him "to meet the witnesses

[383] Wigmore on Evidence, Vol. II, secs. 1401 *et seq.*

[384] Wigmore on Evidence, Vol. II, p. 1755.

[385] U. S. *v.* Anastasio (1906), 6 Phil. 413.

[386] 223 U. S. 442, 56 L. Ed. 500 (1912), citing many cases, including People *v.* Murray (1883), 52 Mich. 288, 17 N. W. 843. See also

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face to face" in that the judgment of conviction for homicide was rested in part upon the testimony produced before the justice of the peace at the trial for assault and battery, and at the preliminary investigation. But the court overruled the point, the record having been offered by the accused without qualification or restriction. The Court said: "The right of confrontation secured by the Philippine Civil Government act is in the nature of a privilege extended to the accused, rather than a restriction upon him (State *v.* McNeil, 33 La. Ann. 1332, 1335). He is free to assert it or to waive it, as to him may seem advantageous."

Attendance of witnesses.[387]

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * *

"To have compulsory process issue for obtaining witnesses in his own favor." (Code of Criminal Procedure, sec. 15 (6).)

Chapter XVI of the Code of Civil Procedure provides for subpœnas and the compelling of the attendance of witnesses, both for the benefit of the prosecution and the defense.

Due process of law.

This subject we will discuss in section 140. It is, however, most important as a protection to accused in criminal cases.[388] Due process in fact becomes part and parcel

to same effect U. S. *v.* Anastasio (1906), 6 Phil. 413, and U. S. *v.* Raymundo (1909), 14 Phil. 460.

[387] See Cooley's Constitutional Limitations, 7th Ed., pp. 474, 475; 8 R. C. L. pp. 81, 82.

[388] See for example Dowell *v.* U. S. (1911), 221 U. S. 325, 55 L. Ed. 753 holding: Due process of law was not denied by the action of the

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of all guaranties in favor of defendants held to answer for criminal offenses.

"The requirement that no person shall be held to answer for a criminal offense without 'due process of law,'" said Mr. Justice Johnson in United States *v.* Ocampo, "simply requires that the procedure established by law shall be followed. If that procedure fully protects the life, liberty, and property of the citizens in the State, then it will be held to be 'due process of law.'"[389] A little later in United States *v.* Grant, Mr. Justice Trent said: "The phrase 'due process of law,' used in the Philippine Bill, should receive a comprehensive interpretation, and no procedure should be treated as unconstitutional which makes due provision for the trial of the criminal before a court of competent jurisdiction, for bringing the party against whom the proceeding is had into court, and notifying him of the case he is required to meet, for giving him an opportunity to be heard in his defense; for the deliberation and judgment of the court, and for an appeal from that judgment to the highest tribunal of the State for hearing and judgment there."[390] Both of these cases decided a point which can as well be considered here as anywhere else, namely, with reference to the constitutionality of Act 612, section 2, providing that: "In cases triable only in the Court of First Instance in the city of

Supreme Court of the Philippine Islands in making an order upon its own motion when the accused were absent from the court, requiring the judge and clerk of the court below to supply deficiencies in the record; and *In re* Montagne (1904) 3 Phil. 577 holding: "A proceeding for the disbarment of an attorney is one within the jurisdiction of the court of which he is an attorney, and is not an invasion of the provisions of the Philippine bill that no one shall be prosecuted for a criminal offense except by due process of law; the proceeding is not criminal, and is itself due process of law."

[389] 18 Phil. 1, 41 (1910), italics those of court, affirmed on appeal to the United States Supreme Court.

[390] 18 Phil. 122, 154 (1910).

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Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the prosecuting attorney (of the city of Manila) after due investigation of the facts, under section 39 of the Act of which this is an amendment (No. 183, the Charter of the city of Manila), shall have presented an information against him in proper form." These decisions as well as the previous ones of United States *v.* Wilson (1905) 4 Phil. 317; United States *v.* McGovern (1906) 6 Phil. 621; and United States *v.* Raymundo (1909) 14 Phil. 416, are uniform in holding —Act 612, section 2, is valid; defendants in criminal actions in the city of Manila are not entitled as of right to a preliminary investigation by the Court of First Instance; and a preliminary investigation by the Prosecuting Attorney of the city of Manila constitutes due process of law—to use the words of the Chief Justice in United States *v.* McGovern "due process of law has not been lacking." The United States Supreme Court affirmed these conclusions on appeal in the Ocampo case.[391] But necessarily an accused who is deprived of his liberty, tried, and sentenced without the proper preliminary investigation having been made, is convicted without due process of law.[392]

Double jeopardy.

"When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an information or complaint, the conviction, acquittal or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted

[391] Ocampo v. U. S. (1914), 234 U. S. 91, 58 L. Ed. 1231.
[392] U. S. *v.* Banzuela (1915), XIV O. G. 159.

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under such complaint or information." (Code of Criminal Procedure, sec. 26.)

"If the defendant shall have been formerly acquitted on the ground of variance between the complaint or information and the proof, or if the complaint or information shall have been dismissed upon objection to its form or substance or in order to hold the defendant for a higher offense without a judgment of acquittal, it shall not be considered an acquittal of the same offense." (Code of Criminal Procedure, sec. 27.)

"A person cannot be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously brought to trial in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined, when the case is dismissed or otherwise terminated before judgment without the consent of the accused." (Code of Criminal Procedure, sec. 28.)

The Philippines have furnished the leading cases on this subject.[393]

Kepner *v.* United States[394] was the first. Kepner charged with embezzlement was acquitted in the Court of First Instance. Upon appellate proceedings, as permitted by the Code, by the government to the Supreme

[393] See Hall's Cases on Constitutional Law, p. 198, note.

[394] 195 U. S. 100, 11 Phil. 669 (1904) following other decisions of the United States Supreme Court. The Kepner case is thus described in Trono *v.* U. S. *infra:* "The plaintiff in error in that case had been acquitted of the crime charged against him in the Court of First Instance, but the Government, not being satisfied with the decision, appealed to the Supreme Court, and that court reversed the judgment of acquittal and found Kepner guilty of the crime of which the Court of First Instance had acquitted him, and sentenced him to a term of imprisonment, and suspended him from any public office or public trust, and deprived him of the right of suffrage. This court, upon writ of error, held that, in reversing upon the appeal of

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Court, the judgment was reversed and Kepner found guilty. Error was assigned upon the ground that the accused had been put in jeopardy a second time by the appellate proceedings. The United States Supreme Court recognized that statutes giving the Government a right to review upon the steps merely preliminary to a trial before the accused is legally put in jeopardy have been quite generally sustained by the courts. So the Government can appeal from a decision of an inferior court sustaining a demurrer.[395] On the main point of jeopardy we quote portions of the opinion of Mr. Justice Day, as follows:

"It is true that some of the definitions given by the text-book writers, and found in the reports, limit jeopardy to a second prosecution after verdict by a jury; but the weight of authority, as well as decisions of this court, have sanctioned the rule that a person has been in jeopardy when he is regularly charged with a crime before a tribunal properly organized and competent to try him, certainly so after acquittal. (Coleman *v.* Tennessee, 97 U. S. 509.)

"It is, then, the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment. The protection is not, as the court below held, against the peril of second punishment, but against being again tried for the same offense.

the Government, the judgment of the Court of First Instance, and itself convicting the accused and pronouncing judgment against him, the Supreme Court of the Islands violated the provisions in question, and its judgment was therefore reversed and the prisoner discharged. It was also held that the Government had no power to obtain a review of a judgment or decision of the trial court acquitting an accused party."

[395] U. S. *v.* Ballantine (1905), 4 Phil. 672, 680; People *v.* Webb (1869), 38 Cal. 467.

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"The Ball case (163 U. S. *supra*), establishes that to try a man after a verdict of acquittal is to put him twice in jeopardy, although the verdict was not followed by judgment. That is practically the case under consideration, viewed in the most favorable aspect for the Government. The Court of First Instance, having jurisdiction to try the question of the guilt or innocence of the accused, found Kepner not guilty; to try him again upon the merits, even in an appellate court, is to put him a second time in jeopardy for the same offense, if Congress used the terms as construed by this court in passing upon their meaning. We have no doubt that Congress must be held to have intended to have used these words in the well-settled sense as declared and settled by the dicisions of this court.

"It follows that Military Order No. 58, as amended by act of the Philippine Commission, No. 194, in so far as it undertakes to permit an appeal by the Government after acquittal, was repealed by the act of Congress of July, 1902, providing immunity from second jeopardy for the same criminal offense."

Trono *v.* United States [396] was the second. Plaintiffs in error were tried for murder in the Court of First Instance. They were convicted of the crime of assault and sentenced to six months' imprisonment and a fine. They appealed to the Supreme Court of the Philippine Islands which reversed the judgment and found them guilty of homicide and sentenced them to various terms from eight to fourteen years' imprisonment and a fine. A writ of error sought a review of the judgment on the ground that the action of the Supreme Court of the Philippine Islands in increasing sentence amounted to putting the

[396] 199 U. S. 521, 11 Phil. 726 (1905), explaining Hopt *v.* Utah (1884), 110 U. S. 574, 28 L. Ed. 262. Followed in Flemister *v.* U. S., (1907), 207 U. S. 372, 52 L. Ed. 252; Ocampo *v.* U. S. (1914), 234 U. S. 91, 58 L. Ed. 1231.

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accused in second jeopardy. The United States Supreme Court, speaking through Mr. Justice Peckham, noted an obvious difference between the Kepner case and the present one. "The difference is vital between an attempt by the Government to review the verdict or decision of acquittal in the Court of First Instance and the action of the accused person in himself appealing from the judgment and asking for its reversal, even though that judgment, while convicting him of the lower offense, acquits him of the higher one charged in the complaint." The court then said: "In our opinion the better doctrine is that which does not limit the court or jury, upon a new trial, to a consideration of the question of guilt of the lower offense of which the accused was convicted on the first trial, but that the reversal of the judgment of conviction opens up the whole controversy and acts upon the original judgment as if it had never been. The accused by his own action has obtained a reversal of the whole judgment, and we see no reason why he should not, upon a new trial, be proceeded against as if no trial had previously taken place. We do not agree to the view that the accused has the right to limit his waiver as to jeopardy, when he appeals from a judgment against him. As the judgment stands before he appeals, it is a complete bar to any further prosecution for the offense set forth in the indictment, or of any lesser degree thereof. No power can wrest from him the right to so use that judgment, but if he chooses to appeal from it and to ask for its reversal he thereby waives, if successful, his right to avail himself of the former acquittal of the greater offense, contained in the judgment which he has himself procured to be reversed."

Grafton *v.* United States [397] was the third. Grafton,

[397] 206 U. S. 333, 11 Phil. 776 (1907). See also U. S. *v.* Gimenez (1916) XIV O. G. 722.

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a private in the Army of the United States, was tried before a general court-martial for murder. He was found not guilty of the charge. Notwithstanding, the provincial *fiscal* of Iloilo filed a criminal information in the name of the United States in the Court of First Instance of that province charging Grafton with the crime of assassination. The trial resulted in a judgment declaring Grafton guilty of homicide. The case was carried to the Supreme Court of the Philippines where judgment was affirmed. The principal contention of the accused before the United States Supreme Court was that his acquittal by the court-martial forbade his again being tried in the civil court for the same offence. The court, by Mr. Justice Harlan, said:

"We assume as indisputable, on principle and authority, that before a person can be said to have been put in jeopardy of life or limb the court in which he was acquitted or convicted must have had jurisdiction to try him for the offence charged. It is alike indisputable that if a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance. . . .

"It thus appears to be settled that the civil tribunals cannot disregard the judgments of a general court-martial against an accused officer or soldier, if such court had jurisdiction to try the offense set forth in the charge and specifications; this, notwithstanding the civil court, if it had first taken hold of the case, might have tried the accused for the same offense or even one of higher grade arising out of the same facts. . . .

"It must, then, be taken on the present record that an affirmance of the judgment of the civil court will subject the accused to punishment for the same acts, constituting the same offense as that of which he had been previously

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acquitted by a military court having complete jurisdiction to try and punish him for such offense. . . .

"We rest our decision of this question upon the broad ground that the same acts constituting a crime against the United States can not, after the acquittal or conviction of the accused in a court of competent jurisdiction, be made the basis of a second trial of the accused for that crime in the same or in another court, civil or military, of the same government. Congress has chosen, in its discretion, to confer upon general courts-martial authority to try an officer or soldier for any crime, not capital committed by him in the territory in which he is serving. When that was done the judgment of such military court was placed upon the same level as the judgments of other tribunals when the inquiry arises whether an accused was, in virtue of that judgment, put in jeopardy of life or limb. Any possible conflict in these matters, between civil and military courts, can be obviated either by withholding from courts-martial all authority to try officers or soldiers for crimes prescribed by the civil power, leaving the civil tribunals to try such offenses, or by investing courts-martial with exclusive jurisdiction to try such officers and soldiers for all crimes, not capital. . . .

"We adjudge that, consistently with the above act of 1902 and for the reasons stated, the plaintiff in error, a soldier in the army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory."

Gavieres *v.* United States,[398] although to a lesser extent, was the fourth. The judgment in this case was that

[398] 220 U. S. 338, 342, 55 L. Ed. 489 (1911). See also Burton *v.* U. S. (1906) 202 U. S. 344, 50 L. Ed. 1057.

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the offenses of behaving in an indecent manner in a public place open to public view, punishable under the municipal ordinance, and of insulting a public officer by deed or word in his presence, contrary to the Penal Code, are not identical, so that a conviction of the first will bar a prosecution for the other, although the acts and words of the accused set forth in both charges are the same. "The protection intended and specifically given is against second jeopardy for the *same offense.*" The court then quotes approvingly from Morey *v.* Commonwealth, 108 Mass. 433, in which Judge Gray held: "A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

Built upon or around these fundamental decisions are a number of others. Flemister *v.* United States [899] held that an accused is not placed twice in jeopardy for the same offense within the meaning of the Philippine Bill, because the Supreme Court of the Philippine Islands, upon reversing judgment below in a criminal case, on an appeal taken by the accused, convicted him, on the same facts, of a different offense, carrying an increased sentence. The court further held that treating as two different offenses, assaults on two different individuals does not place the accused twice in jeopardy for the same offense,

[899] 207 U. S. 372, 52 L. Ed. 252 (1907).

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even if these assaults occurred very near each other, in one continuing attempt to defy the law. Diaz *v.* United States [400] held that the prosecution for homicide of a person previously convicted of an assault and battery from which the death afterwards ensued does not place the accused twice in jeopardy for the same offense, especially where the jurisdiction of the justice of the peace before whom the assault and battery charged was tried did not extend to homicide cases.

"An act may be a penal offense under the laws of the State, and other penalties under proper authority may be imposed for its commission by municipal ordinance, and the enforcement of one penalty would not preclude the enforcement of the other by such municipality." [401] The same acts may violate two or more provisions of the criminal law. When they do, a prosecution under one will not bar prosecution under another provision of the penal law.[402] However, "that portion of the Philippine Bill embodying the principle that no person shall be twice put in jeopardy of punishment for the same offense should, in accordance with its letter and spirit, be made to cover as nearly as possible every result which flows from a single criminal act impelled by a single criminal intent." *E. g.* the possession of two firearms under the conceded facts of this case constituted but one criminal act, one volition.[403]

Under the laws of the Philippine Islands, a defendant is not placed in legal jeopardy until he has been placed on trial under the following conditions: 1. Upon a good

[400] 223 U. S. 442, 56 L. Ed. 500 (1912).

[401] U. S. *v.* Chan Cun Chay (1905) 5 Phil. 385, 389. See to same effect U. S. *v.* Joson (1913) 26 Phil. 1, citing many authorities; IV Op. Atty. Gen. P. I. 721, and McInerney *v.* City of Denver (1892) 17 Col. 302, 29 Pac. 516.

[402] U. S. *v.* Capurro (1906) 7 Phil. 24.

[403] U. S. *v.* Gustillo (1911) 19 Phil. 208, 212, 213.

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complaint; 2. before a competent court; 3. after the defendant has been arraigned; 4. after the defendant has plead to the complaint; 5. after the investigation of the charges has actually commenced by calling up of a witness.[404] "A conviction or an acquittal before a court having no jurisdiction, is, of course, like all the proceedings in the case, absolutely void, and, therefore, no bar to subsequent indictment and trial in a court which has jurisdiction of the offense." [405] And the prosecution of a defendant by virtue of a new complaint, after the dismissal of a former complaint before he was arraigned and had pleaded to the charge, does not constitute twice in jeopardy.[406]

Witness against himself.[407]

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * * * *

"To testify as a witness in his own behalf; but if a defendant offers himself as a witness he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him." (Code of Criminal Procedure, sec. 15 (3).)

"To be exempt from testifying against himself." (Code of Criminal Procedure, sec. 15 (4).)

"Under the system of Criminal Procedure existing here under the Spanish government," according to Mr. Justice McDonough (although a jurist well-informed on the Civil Law, Mr. Justice Mapa, in a dissenting opinion in

[404] U. S. *v.* Ballantine (1905) 4 Phil. 672, followed in U. S. *v.* Montiel (1907) 7 Phil. 272 and other cases.

[405] U. S. *v.* Jayme (1913) 24 Phil. 90, 93; U. S. *v.* Rubin (1914) 28 Phil. 631.

[406] U. S. *v.* Solis (1906) 6 Phil. 676.

[407] See generally Wigmore on Evidence, Vol. IV, Ch. LXXVIII.

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the same case found otherwise), "it was doubtless lawful to require a suspected or accused person to give evidence touching the crime of which he was charged or suspected." [408] The court then proceeds to explain the provision as follows:

"The provision that no one is bound to criminate himself is older than the government of the United States. At an early day it became a part of the common law of England.

"It was established on the grounds of public policy and humanity—of policy, because if the party were required to testify, it would place the witness under the strongest temptation to commit the crime of perjury, and of humanity, because it would prevent the extorting of confessions by duress.

"It had its origin in a protest against the inquisitorial methods of interrogating the accused person, which had long obtained in the continental system. (Jones's Law of Evidence, sec. 887; Black's Constitutional Law, 575.)

"In other words, the very object of adopting this provision of law was to wipe out such practices as formerly prevailed in these Islands of requiring accused persons to submit to judicial examinations, and to give testimony regarding the offenses with which they were charged." (p. 152.)

The United States Supreme Court gives the following brief history of the provision: "The exemption from testimonial compulsion, that is, from disclosure as a witness of evidence against oneself, forced by any form of legal process, is universal in American law, though there may be differences as to its exact scope and limits. At the time of the formation of the Union the principle that no person could be compelled to be a witness against himself had become embodied in the common law and dis-

[408] U. S. *v.* Navarro (1904) 3 Phil. 143, 148, 152.

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tinguished it from all other systems of jurisprudence. It was generally regarded then, as now, as a privilege of great value, a protection to the innocent, though a shelter to the guilty, and a safeguard against heedless, unfounded, or tyrannical prosecutions." [409] That the court is, however, not a very enthusiastic defender of the exemption is seen from the following in the same case, relative to the policy of the privilege: "Salutary as the principle may seem to the great majority, it cannot be ranked with the right to hearing before condemnation, the immunity from arbitrary power not acting by general laws, and the inviolability of private property. The wisdom of the exemption has never been universally assented to since the days of Bentham, many doubt it to-day, and it is best defended not as an unchangeable principle of universal justice, but as a law proved by experience to be expedient." Dean Wigmore, after giving the history and policy of the privilege in much more detail than above, states of the constitutional provisions:

"The Federal Constitution and the Constitutions of the various States (with two exceptions), have at one time or another come to add their sanctions to the principle of the privilege, and have thus established it solidly beyond the reach of ordinary legislative alteration. But this constitutional sanction, being merely a recognition and not a new creation, has not altered the tenor and scope of the privilege; it has merely given greater permanence to the traditional rule as handed down to us. The framers of the Constitutions did not intend to codify the various details of the rule, or to alter in any respect its known bearings, but merely to describe it sufficiently for identification as a principle. . . .

"The detailed rules are to be determined by the logical requirements of the principle, regardless of the particular

[409] Twining *v.* New Jersey (1908) 211 U. S. 78, 53 L. Ed. 97.

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words of a particular constitution. This doctrine, which has universal judicial acceptance, leads to several important consequences. (1) A clause exempting a person from being 'a witness against himself' protects as well a *witness* as a *party accused* in the cause; that it, it is immaterial whether the prosecution is then and there 'against himself' or not. So also a clause exempting 'the accused' protects equally a mere witness. (2) A clause exempting from self-criminating testimony 'in criminal cases' protects equally in *civil cases,* when the fact asked for is a criminal one. (3) The protection, under all clauses, extends to *all manner of proceedings* in which testimony is to be taken, whether litigious or not, and whether *ex parte* or otherwise; it therefore applies in all kinds of courts, in all methods of interrogation before a court, in investigations by a grand jury, and in investigations by a legislature or a body having legislative functions." [410]

The privilege is one which may be waived.[411] The rule is not the same for a corporation as for an individual. "While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges." [412]

The Code, be it remembered, provides that the defendant's "neglect or refusal to be a witness shall not, in any manner, prejudice or be used against him." That this presumption is generally deemed just is seen from the words to be found in a decision of the Court of Appeals of the State of New York, quoted by our Supreme Court. "A law which, while permitting a person

[410] Wigmore on Evidence, Vol. IV, sec. 2252.
[411] Wigmore on Evidence, Vol. IV, secs. 2275-2277.
[412] Hale *v.* Henkel (1906) 201 U. S. 43, 50 L. Ed. 652.

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accused of a crime to be a witness in his own behalf, should at the same time authorize a presumption of guilt from his omission to testify; would be a law *adjudging guilt without evidence,* and while it might not be obnoxious to the constitutional provision against compelling a party in a criminal case to give evidence against himself, would be law reversing the presumption of innocence, and would violate the fundamental principles binding alike upon the legislature and the courts." [413] In United States *v.* Luzon, Mr. Justice Johnson said: "The accused has a perfect right to remain silent and his silence can not be used as a presumption of his guilt. Neither can the sentence be increased by reason of the fact that the defendant fails to give proof in favor of or against his culpability; he can not be convicted of a higher offense than that alleged in the complaint simply because he fails or refuses to testify." [414]

Bail.

(Code of Criminal Procedure, secs. 63-76 too long to quote.)

Another of the protections thrown around persons accused of crime is the right to be admitted to bail before conviction, except for capital offenses. The reason for this clause is because the accused must only answer a charge not proved, and so an unnecessary indignity should not be inflicted on one who may later be found to be innocent. In capital offenses [415]—those involving a penalty of death—it is felt, however, that monetary considerations would not ordinarily be a restraint on the defendant. "All that a man hath will he give for his life." To bail an

[413] People *v.* Courtney, 94 N. Y. 490, quoted in U. S. *v.* Navarro (1904) 3 Phil. 143, 155.

[414] 4 Phil. 343, 347 (1905).

[415] See 3 R. C. L. p. 9 for definition of "capital offenses."

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arrested person "is to deliver him in contemplation of law, yet not commonly in real fact, to others who become entitled to his custody, and responsible for his appearance when and where agreed in fulfillment of the purpose of the arrest." [416]

Bail is regulated in the Philippines by the Code of Criminal Procedure. Suffice it here to state that section 63 of the Code makes bail a matter of right before conviction in all cases not capital, by copying the provisions of most State constitutions, providing that "All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong." [417] This is a much stronger provision than that of the Spanish-Filipino law.[418] The next succeeding section of the Code recognizes the judicial discretion of the court in all non-capital cases after judgment by any court other than a justice of the peace. Even capital offenses, as murder and treason, the Supreme Court has said "are bailable in the discretion of the court before conviction." [419] The form of the bail bond being prescribed by Philippine law, such form must be followed in substance.[420] The undertaking of the sureties on a bail bond is limited to presenting the principal when called for by the court.[421]

[416] See generally 1 Bishop's New Criminal Procedure, 2d Ed., Ch. 17, quotation at p. 197 and 3 R. C. L., pp. 1 *et seq.*

[417] See 1 Bishop's New Criminal Procedure, 2d Ed., pp. 209, 210, and 3 R. C. L. p. 6.

[418] *Ley Provisional,* secs. 32-36. See Abreu, The Blending of the Anglo-American Law with the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, pp. 285, 299.

[419] U. S. v. Babasa (1911) 19 Phil. 198, 201.

[420] Bondoy *v.* Judge of First Instance (1909) 14 Phil. 620.

[421] U. S. *v.* Bonoan (1912) 22 Phil. 1, giving also the procedure in the forfeiture of bail bonds. See also the leading case of U. S. *v.* Addison (1914) 27 Phil. 563.

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Assistance of counsel.

"If the defendant appears without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him. A reasonable time must be allowed for procuring counsel." (Code of Criminal Procedure, sec. 17.)

The President's Instructions to the Commission and the United States Constitution in the sixth amendment provides specifically for assistance of counsel for the defense of the accused. Judge Cooley also speaks of the right to counsel as "perhaps the privilege most important to the person accused of crime." [422] So the right to counsel is one of which the defendant should not be deprived "and the failure of the court to assign counsel, or after the counsel has been assigned, to require him to perform this duty by appearing and defending the accused would be sufficient cause for the reversal of the case." [423] No attorney in a criminal case is at liberty to decline to defend an improvident defendant. However, the rights of a defendant to counsel and for reasonable time to procure counsel are strictly personal and may be waived.[424]

Various other rights.

"In all criminal prosecutions the defendant shall be entitled:

* * * * * * * *

"To have the right of appeal in all cases." (Code of Criminal Procedure, sec. 15 (8). See also secs. 43-49, as amended.)

[422] Cooley's Constitutional Limitations, 7th Ed., p. 474.

[423] U. S. *v.* Gimeno (1902) 1 Phil. 237.

[424] U. S. *v.* Kilayko (1915) XIII O. G. 1541; U. S. *v.* Go Leng (1912) 21 Phil. 426; U. S. *v.* Labial (1914) 27 Phil. 82.

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"After his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial." (Code of Criminal Procedure, sec. 30.)

"A defendant in a criminal action shall be presumed to be innocent until the contrary is proved, and in case of a reasonable doubt that his guilt is satisfactorily shown he shall be entitled to an acquittal." (Code of Criminal Procedure, sec. 57.)

"The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the *promotor fiscal* to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right." (Code of Criminal Procedure, sec. 107.)

Of these and other well-recognized rights of the accused, this only need be said: The right of appeal, although well guarded, is but a purely statutory right and not a necessary element of due process of law.[425] As to the time in which to prepare for trial, the Supreme Court of the Philippines held that the refusal of a trial court to give to the defendant in a criminal action, when demanded by him, the two days in which to prepare for trial, such provision being mandatory and imperative leaving no discretion in the court, deprives the accused of a constitutional right, namely, a right to trial by due

[425] U. S. *v.* Gomez (1915) XIII O. G. 1628; McKane *v.* Durston (1894) 153 U. S. 684, 38 L. Ed. 867.

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process of law, and habeas corpus will lie to release him from imprisonment imposed under a judgment of conviction in such case.[426] On appeal [427] the United States Supreme Court took a different view, holding that under the circumstances developed, denial of the right for time to answer and to prepare defense was at most matter of error which did not vitiate the entire proceedings. "But for the sections in respect of procedure quoted from General Order No. 58 it could not plausibly be contended that the conviction was without due process of law. . . . Certainly they are not so peculiarly inviolable that a mere misunderstanding of their meaning or harmless departure from their exact terms would suffice to deprive the proceedings of lawful effect and enlarge the accused." As to the presumption of innocence, this, according Judge Cooley and other writers, "is an absolute protection against conviction and punishment, except either *first,* on confession in open court; or, *second,* on proof which places the guilt beyond any reasonable doubt." [428] Section 107 of the Code secures to the person claiming to be injured by the commission of an offense the privileges to take part in the prosecution and to recover damages for the injury sustained by reason of the same.[429] We consider hereafter further protections to persons in criminal cases, *i. e.,* suspension of the writ of habeas corpus, sec. 133; *ex post facto* laws, sec. 134; bills of attainder, sec. 135; excessive bail, excessive fines, and cruel and unusual punishments, sec. 136; unreasonable searches and seizures; warrants, sec. 137; treason, sec. 138; etc.

An unmixed gain to the personal rights is represented

[426] Shields *v.* McMicking (1912) 23 Phil. 526.

[427] McMicking *v.* Shields (1915) 238 U. S. 99, 59 L. Ed. 1220. Compare with 8 R. C. L. pp. 67, 68.

[428] Cooley's Constitutional Limitations, 7th Ed., p. 439.

[429] See Springer *v.* Odlin (1904) 3 Phil. 344 and many other cases.

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by the changes in Criminal Procedure.[430] To quote Mr. Justice Day in Dorr *v.* United States: "It can not be successfully maintained that this system (the Philippine judicial system) does not give an adequate and efficient method of protecting the rights of the accused as well as executing the criminal law by judicial proceedings, which give full opportunity to be heard by competent tribunals before judgment can be pronounced."[431] *Quære.* Has not the State out of over zealousness to be fair gone too far and placed too many weapons in the hands of those accused of crime?

§ 133. Suspension of the Writ of Habeas Corpus.—

Philippines.	*United States.*
"That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor-General, with the approval of the Philippine Commission, wherever during such periods the necessity for such suspension shall exist." (Philippine Bill, sec. 5, par. 7.)	"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." (United States Constitution, art. I, sec. 9, par. 2.)
"That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by	

[430] Abreu, The Blending of the Anglo-American Common Law with the Spanish Civil Law in the Philippines, III Philippine Law Review, May, 1914, pp. 286, 302.

[431] 195 U. S. 138, 146, 49 L. Ed. 128, 11 Phil. 706 (1904).

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the President, or by the Governor-General, wherever during such period the necessity for such suspension shall exist." (Philippine Autonomy Act, sec. 3, par. 7.)

The Governor-General "may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided*, That whenever the Governor-General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General." (Philippine Autonomy Act, sec. 21, portion.)

The implantation of the writ of habeas corpus, often termed "the writ of liberty," in the Philippines was one of the most praiseworthy and beneficent acts of the American administration. From the Habeas Corpus Act of 1679, and even centuries before, down to the present, this great writ has been a privilege dear to all English speaking people. It is now the priceless heritage of the Filipino people, protecting every person against arbitrary arrest. As illustrating its potent effect, it is said that immediately on going into force in the Philippines, more than one hundred prisoners were liberated from an unwarranted detention.[432]

[432] Report of the War Department, June 30, 1900, Report of the Military Governor of the Philippine Islands, p. 19; Abreu, The Blend-

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The general rules which govern the issuance of the writ of habeas corpus belong to the field of remedial law.[433] The constitutional phase pertaining to suspension of the writ was covered in the Philippines in the case of Barcelon *v.* Baker.[434] Therein, in a learned opinion by Mr. Justice Johnson (here modified to conform to the provisions of the Philippine Autonomy Act which omits reference to the Philippine Commission), it was held: 1. That the privilege of the writ of habeas corpus may be suspended in the Philippine Islands in the case of rebellion, insurrection, or invasion when the public safety requires it, by the President of the United States or by the Governor-General of the Philippine Islands; 2. That there is conferred upon the President or the Governor-General discretionary power to determine whether or not there exists the state of rebellion, insurrection, or invasion and whether the public safety requires the suspension of the privilege of the writ; and 3. That when the President or the Governor-General declares that a state of rebellion, insurrection, or invasion exists, this declaration is conclusive against the Judicial Department of the Government.

§ 134. Ex post facto laws.

Philippines.	*United States.*
"That no . . . *ex post facto* law shall be passed." (President's Instructions to the Philippine Commission.)	"No . . . *ex post facto* law shall be passed." (United States Constitution, art. I, sec. 9, par. 3, portion.)
"That no *ex post facto* law	"No State shall . . . pass

ing of the Anglo-American Common Law with the Spanish Civil Law in the Philippine Islands, III Philippine Law Review, May, 1914, pp. 298, 299.

[433] See Bailey on Habeas Corpus, Church on Habeas Corpus, and other texts; and opinions of the Supreme Court of the United States and of the Philippines.

[434] 5 Phil. 87 (1905).

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. . . shall be enacted." (Philippine Bill, sec. 5, par. 8, portion.)

"That no *ex post facto* law . . . shall be enacted." (Philippine Autonomy Act, sec. 3, par. 8, portion.)

any . . . *ex post facto* law." (United States Constitution, art. I, sec. 10, par. 1, portion.)

An *ex post facto* law was defined by Mr. Chief Justice Marshall in Fletcher *v.* Peck to be one which makes an act punishable "in a manner in which it was not punishable when committed." [435] The New York Court, copying this quotation, says that if to this there be added "or which increases the punishment with which the act was punishable when committed," the definition is as complete and certain as it can well be made.[436] Mr. Justice Chase in the early and basic case of Calder *v.* Bull said that: "The prohibition, . . . is an additional bulwark in favor of the personal security of the subject, to protect his person from punishment by legislative acts, having a retrospective operation,"—and that he considered as *ex post facto* laws the following: "1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment that the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender." [437] To this, Judge Cooley would add: "5. Every law which, assuming to regulate civil rights and remedies only, in

[435] 6 Cranch 87, 3 L. Ed. 162 (1810).

[436] Shepherd *v.* People (1862) 25 N. Y. 406.

[437] 3 Dall. 386, 390, 1 L. Ed. 648 (1798). Definition followed in Mekin *v.* Wolfe (1903) 2 Phil. 74.

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effect imposes a penalty or the deprivation of a right for something which when done was lawful. And 6. Every law which deprives persons accused of crime of some lawful protection to which they have become entitled; such as the protection of a former conviction or acquittal, or of a proclamation of amnesty." [438] The test by which one can determine whether a law is *ex post facto* or not is stated by the United States Supreme Court, reviewing their previous decisions, thus: "A statute belongs to that class which by its necessary operation and 'in its relation to the offense, or its consequences, alters the situation of the accused to his disadvantage.' " [439]

Acknowledging the authority of Calder *v.* Bull, there are yet judicial modifications which should be emphasized. The first negation is found in the case itself which confines the prohibition to laws of a *criminal* nature; so all retrospective laws are not *ex post facto* laws.[440] A number of Philippine cases have upheld and applied retrospective or retroactive laws.[441] Again, the mere fact of an alteration in the manner of punishment without reference to the question of mitigation does not necessarily render an act obnoxious to the constitutional provision.[442] "Statutes regulating procedure, if they leave untouched all the substantial protections with which existing law surrounds the person accused of crime, are not within

[438] Cooley, Principles of Constitutional Law, p. 313.

[439] Thompson *v.* Utah (1898) 170 U. S. 343, 42 L. Ed. 1061. See also Kring *v.* Missouri (1883) 107 U. S. 221, 27 L. Ed. 506 and People *v.* McDonald (1895) 5 Wyo. 526, 29 L. R. A. 834.

[440] See as corroborative local authorities Mekin *v.* Wolfe (1903) 2 Phil. 74; Paynaga *v.* Wolfe (1903), 2 Phil. 146; U. S. *v.* Ang Kan Ko (1906) 6 Phil. 376; 4 Op. Atty. Gen. P. I. 43; and U. S. *v.* Heinszen (1907) 206 U. S. 370, 51 L. Ed. 1098.

[441] See sec. 176 *infra* and notes thereto.

[442] Peckham J. in People *v.* Hayes (1894) 140 N. Y. 484, 492, 23 L. R. A. 830. In several cases changes in the manner of punishment have been held valid. Commonwealth *v.* Wyman (1853) 12 Cush.

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the constitutional inhibition of *ex post facto* laws." [443] Finally, without mentioning other principles which are best stated in Cooley's Constitutional Limitations,[444] the United States Supreme Court has said: "Any statutory alteration of the legal rules of evidence which would authorize conviction upon less proof, in amount or degree, than was required when the offense was committed, might, in respect of that offense, be obnoxious to the constitutional inhibition upon *ex post facto* laws. But alterations which do not increase the punishment, nor change the ingredients of the offense, or the ultimate facts necessary to establish guilt, but, leaving untouched the nature of the crime, and the amount or degree of proof essential to conviction, only remove existing restrictions upon the competency of certain classes of persons as witnesses, relate to modes of procedure only, in which no one can be said to have a vested right, and which the state, upon grounds of public policy, may regulate at pleasure." [445]

(Mass.) 237 (death to life imprisonment); Commonwealth *v.* Gardner (1858) 11 Gray (Mass.) 438 (same); McGuire *v.* State (1898) 76 Miss. 504, 25 So. 495 (same); Rooney *v.* North Dakota, (period of confinement before execution increased from 3-6 months to 6-9 months), Harlan, J., saying (196 U. S. 325, 25 Sup. Ct. 266, 49 L. Ed. 494, 3 Ann. Cas. 76): "The court must assume that every rational person desires to live as long as he may;" State *v.* Williams (1846) 2 Rich. (S. C.) 418, 45 Am. Dec. 741 (death to whipping, imprisonment and fine); Strong *v.* State (1822), 1 Blackf. (Ind.) 193 (whipping to imprisonment). . . . A change in punishment that is in good faith referable to prison discipline as its primary object is valid, even though more onerous. Hartung *v.* People (1860) 22 N. Y. 95, 105; Murphy *v.* Commonwealth (1899) 172 Mass. 264, 269, 52 N. E. 505, 43 L. R. A. 154, 70 Am. St. Rep. 266 (cases). Hall's Cases on Constitutional Law, p. 171, note.

[443] Thompson *v.* Utah, (1898) 170 U. S. 343, 42 L. Ed. 1061, citing Cooley's Constitutional Limitations and previous decisions of the United States Supreme Court.

[444] 7th Ed., pp. 372 *et seq.*

[445] Hopt *v.* Utah (1884) 110 U. S. 574, 590, 28 L. Ed. 262.

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Both the Penal Code and the Civil Code of the Philippines conform generally to the common law doctrines just stated.[446] Our Supreme Court, quoting article 21 of the Penal Code, said that: "It is a well-settled doctrine that penal statutes can not be made retroactive, except in the case they are favorable to the accused." [447] But in another case, Mr. Justice Carson, speaking for the Court, after citing articles 21 and 22 of the Penal Code, found: "The courts of Spain and the learned commentators on Spanish law have construed these provisions to mean that penal laws are to be given a retroactive effect only in so far as they favor the defendant charged with a crime or a misdemeanor, and that, when a penal law is enacted repealing a prior law, such repeal does not have the effect of relieving an offender in whole or in part of the penalties already incurred under the old law, unless the new law favors the defendant by diminishing the penalty or doing away with it altogether, and then only to the extent to which the new law is favorable to the offender." [448] Later in the same case the Justice cited article 3 of the Civil Code and accepted the doctrine laid down by the Spanish commentators in preference to the common law rule as more nearly consonant with the dictates of good sense and sound judgment. Act 864 increasing the subsidiary imprisonment authorized by existing law was held void as to a crime committed prior to the former's passage, being as to such crime an *ex post*

[446] "No felony or misdemeanor shall be punishable by any penalty not prescribed by law prior to its commission.

"Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony or misdemeanor, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same." Penal Code, arts. 21, 22. See also Civil Code, art. 3.

[447] U. S. *v.* Macasaet (1908) 11 Phil. 447, 449.

[448] U. S. *v.* Cuna (1908) 12 Phil. 241.

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facto law.[449] In considering the force of Act 1773 of the Philippine Commission which went into force on October 11, 1907, as to a crime committed prior thereto, although the complaint was not filed until January 18, 1908, Mr. Justice Torres expressed this view: "It is not lawful to attribute retroactive effects to the said Act of the Philippine Commission for the reason that, even though it refers to a matter of procedure, it does not contain any clause making it retroactive in its effects, and furthermore, the provisions thereof if applied now are prejudicial to the accused." [450] But "the assumption of jurisdiction over crimes committed before jurisdiction was conferred is not in violation of the *ex post facto* clause of the Philippine Bill." [451]

§ 135. Bills of attainder.

Philippines.	*United States.*
"That no bill of attainder . . . shall be passed." (President's Instructions to the Philippine Commission.)	"No bill of attainder . . . shall be passed." (United States Constitution, Art. I, sec. 9, par. 3, portion.)
"That no . . . bill of attainder shall be enacted." (Philippine Bill, sec. 5, par. 8, portion.)	"No State shall . . . pass any bill of attainder." (United States Constitution, Art. I, sec. 10, par. 1, portion.)
"That no . . . bill of attainder shall be enacted." (Philippine Autonomy Act, sec. 3, par. 8, portion.)	

In the case of Cummings *v.* Missouri, Mr. Justice Field describes a bill of attainder, as follows: "A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death,

[449] U. S. *v.* Ang Kan Ko (1906) 6 Phil. 376.
[450] U. S. *v.* Gomez (1908) 12 Phil. 279, 282.
[451] U. S. *v.* Jueves (1912) 23 Phil. 100, 105.

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the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text-books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." [452] In the case of *Ex parte* Garland of about the same time, Mr. Justice Miller said: "I think it will be found that the following comprise those essential elements of bills of attainder, in addition to the one already mentioned (which was that they declared certain persons attainted and their blood corrupted, so that it had lost all heritable property), which distinguished them from other legislation, and which made them so obnoxious to the statesmen who organized our government: 1. They were convictions and sentences pronounced by the legislative department of the government, instead of the judicial. 2. The sentence pronounced and the punishment inflicted were determined by no previous law or fixed rule. 3. The investigation into the guilt of the accused, if any such were made, was not necessarily or generally conducted in his presence or that of his counsel, and no recognized rule of evidence governed the inquiry." [453] Both of these decisions have been expressly confirmed by the Supreme Court of the United States.[454]

History reveals such legislative convictions under foreign governments. The most atrocious instance was the

[452] 4 Wall. 277, 323, 18 L. Ed. 356 (1867).
[453] 4 Wall. 333, 388, 18 L. Ed. 366 (1867).
[454] Pierce *v.* Carskadon (1873) 16 Wall. 234, 21 L. Ed. 276.

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great act of attainder passed in 1688 by the Parliament of James II by which between two and three thousand persons were attainted, their property confiscated, and themselves sentenced to death in farcial proceedings.[455] Fortunately, the courts of these Islands have been called upon to deal with no case involving a bill of attainder. Let us hope that our records, legislative and judicial, will thus remain. As Judge Cooley well asks: "What could be more obnoxious in a free government than the exercise of such a power by a popular body, controlled by a mere majority, fresh from the contests of exciting elections, and quite too apt, under the most favorable circumstances, to suspect the motives of their adversaries, and to resort to measures of doubtful propriety to secure party ends?" [456]

§ 136. Excessive bail, excessive fines, and cruel and unusual punishments.

Philippines.

"That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (President's Instructions to the Philippine Commission.)

"That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (Philippine Bill, sec. 5, par. 10.)

"That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (Philippine Autonomy Act, sec. 3, par. 10.)

United States.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." (United States Constitution, eighth amendment.)

[455] See Macaulay's History of England.

[456] Cooley's Constitutional Limitations, 7th Ed., p. 369. See further 8 R. C. L. p. 257.

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The above constitutional provisions, it will be noted, are exactly similar in phraseology. They are, moreover, a transcript of a clause in the English Bill of Rights of 1689.

Excessive bail shall not be required.

This is the negative of the requirement admitting the accused to bail, discussed previously in section 132. The Supreme Court of the Philippines has said of this clause that "the word 'bail' as used in that portion of section 5 of the Act of Congress of July 1, 1902, which provides that 'excessive bail shall not be required' is inadequately translated by the word 'fianza,' as a bail implies a particular kind of bond—that is to say, a bond given to secure the personal liberty of one held in restraint upon a criminal or *quasi* criminal charge." [457] What is not excessive bail is a question which addresses itself to the judicial discretion.[458] Judge Cooley says "That bail is reasonable which, in view of the nature of the offense, the penalty which the law attaches to it, and the probabilities that guilt will be established on the trial, seems no more than sufficient to secure the party's attendance. In determining this, some regard should be had to the prisoner's pecuniary circumstances; that which is reasonable bail to a man of wealth being equivalent to a denial of right if exacted of a poor man charged with the life offense." [459]

[457] Insular Government *v.* Punzalan (1907) 7 Phil. 546, 548.

[458] Discussion by Mr. Livermore in Congress in which he said: "What is meant by the terms 'excessive bail?' Who are to be the judges? What is understood by 'excessive fines'? It lays with the court to determine." Quoted in Weems *v.* U. S. (1910) 217 U. S. 349, 369, 54 L. Ed. 793.

[459] Cooley's Constitutional Limitations, 7th Ed., p. 439.

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Excessive fines shall not be imposed.

The permissible penalties are, of course, for the legislative body to determine. When so determined if a court keep within the limits of the statute, the fine can not usually be held unreasonable. Thus a minimum penalty of three hundred pesos for violations of the penal provisions of the Opium Law is not excessive in the sense in which that word is used in the Philippine Bill of Rights.[460] However, the court may and should take into consideration the defendant's ability to pay the fine.[461]

Cruel and unusual punishment shall not be inflicted.

Curiously enough the Philippines have had the uncertain honor of furnishing in the case of Weems *v.* United States [461a] what has been described by Professor Willoughby as "probably the most interesting discussion which the prohibition of cruel and unusual punishments has received by the Supreme Court," [462] and has been termed by Mr. Justice White, now the Chief Justice, "an interpretation of the eighth amendment, . . . The great importance of the decision is hence obvious." [463] Weems was convicted by a Court of First Instance of falsification of a public document by a public official, and sentenced to the penalty of fifteen years of *cadena,* together with the accessories of article 56 of the Penal Code and to pay a fine of four thousand *pesetas,* but not to serve imprisonment as a subsidiary punishment in case of his insolvency, on account of the nature of the main penalty, and to pay the costs of the cause. The judgment and sentence

[460] U. S. *v.* Valera (1914) 26 Phil. 598.

[461] See generally Cooley's Constitutional Limitations, 7th Ed., p. 471; 8 R. C. L. p. 270; 35 L. R. A. 561, note.

[461a] 217 U. S. 349, 54 L. Ed. 793 (1910).

[462] 2 Willoughby on the Constitution, pp. 831, 832.

[463] Weems *v.* U. S. *id.,* dissenting opinion.

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was affirmed by the Supreme Court of the Philippines.[464] The question of cruel and unusual punishment was not raised in the Philippine courts, but, nevertheless, the United States Supreme Court took cognizance of the assignments of error to this effect under the right reserved in its Rule 35. The Court held that the penalty of *cadena temporal* which is prescribed by the Philippine Penal Code for the crime of falsification of a public document by a public official is a cruel and unusual punishment forbidden by the Philippine Bill of Rights.[465] Mr. Justice White, with whom concurred Mr. Justice Holmes, wrote a strong dissenting opinion.

Mr. Justice McKenna in his opinion for the court, in considering what constitutes a cruel and unusual punishment, found from a review of the cases and the text writers that it had not been exactly decided. "It has been said that ordinarily the terms imply something inhuman and barbarous,—torture and the like. McDonald *v.* Com. 173 Mass. 322, 73 Am. St. Rep. 293, 53 N. E. 874. . . . Other cases have selected certain tyrannical acts of the English monarchs as illustrating the meaning of the clause and the extent of its prohibition." The court also quoted from Wilkerson *v.* Utah (1897) 99 U. S. 130, 25 L. Ed. 345, in which the court's final commentary was that "difficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture, such as those mentioned by the commentator referred to, and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the Constitution. Cooley, Const. Lim. 4th ed. 408; Wharton, Crim.

[464] 7 Phil. 241 (1906).

[465] Derivatory statement of Mr. Justice Carson of the Supreme Court of the Philippines in U. S. *v.* Pico (1911) 18 Phil. 386.

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Law, 7th ed., sec. 3405"—and from *in Re* Kemmler (1880) 136 U. S. 436, 34 L. Ed. 519, where this comment was made: "Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel, within the meaning of that word as used in the Constitution. It implies there something inhuman and barbarous, and something more than the mere extinguishment of life." The Justice then contends for a liberal construction of the Constitution with contemplation of not only what has been but what may be, and for the right of the court to intervene, notwithstanding the conceded power of the legislature to define crimes and fix their punishments. A contrast of the punishment imposed on Weems with other penalties, the court finally states, condemns the sentence in this case as cruel and unusual.

One can hardly commit heresy by mentioning, what is merely the truth, that the opinion of the United States Supreme Court in the Weems case met with little favor, to put it lightly, from the bar of the Philippine Islands. It was felt that the Court had been misled by a faulty English translation of the Penal Code and by a misunderstanding of local practice. But, of course, those incarcerated in Insular prisons seized on the ruling in order to attempt to gain freedom. The official report of the Director of Prisons disclosed nearly five hundred prisoners serving sentences of *cadena temporal* or *cadena perpetua.*[466]

This was the grave situation which confronted the Supreme Court of the Philippine Islands. It met the difficulty by setting at liberty those convicted of and imprisoned for the crime of falsification of a public document, the identical crime in the Weems' case.[467] But the Court

[466] Given in U. S. *v.* Pico, *id.*, at page 389.

[467] See U. S. *v.* Pacheco (1911) 18 Phil. 399 and other cases.

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in the opinion of Mr. Justice Carson in the case of United States *v.* Pico [467a] refused to extend the principle to any other crime whatever its nature in which the penalties of *cadena temporal* or *cadena perpetua* were inflicted. The general opinion was reflected by the practical observation "that a holding by this court that the decision in the Weems case involves a declaration that the various provisions of the Penal Code prescribing either the penalty of *cadena perpetua* or that of *cadena temporal* are repugnant to the Philippine Bill of Rights, and that this court is bound thereby, would result in a general jail delivery of all those heretofore convicted of many of the gravest and most heinous offenses defined and penalized by law; and would be substantially equivalent to a proclamation of amnesty in favor of all those who have heretofore committed such crimes and have not yet been brought to trial, or who may commit them hereafter until such time as the Legislature may be able to reform the Penal Code." Moreover, it declined "to be bound by inferences drawn from observations and comments contained in the opinion in that case which appear to be based upon a misapprehension of facts" or, similarly, "to hold ourselves bound by the further inference, not expressly drawn by the court itself, that the penalties of *cadena perpetua* and *cadena temporal,* as prescribed by existing law in these Islands, are inherently and essentially cruel and unusual punishments." Finally, after giving a correct version of the applicable articles of the Penal Code, the Court said: "We do not think that an obsolete provision of the Spanish Penal Code which is not now enforced and has not been enforced since the Islands were brought under the present sovereignty; which was not enforced at the time when the constitutional guaranty against the infliction of cruel and unusual punishments was inserted in the Philip-

[467a] 18 Phil. 386 (1911).

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pine Bill of Rights; and which there is no lawful authority to require the prison officials to put in force in the future, if the enforcement be held to involve the infliction of a cruel and unusual punishment, should at this late day be given such vital force as to invalidate many of the most important provisions of existing law, and thus impose upon this court the duty of setting at liberty in the community hundreds of the vilest criminals and of proclaiming the immunity of all those who have heretofore been guilty of many of the gravest and most heinous offenses known to the law."

Thus stands the unusual Philippine situation in regard to cruel and unusual punishment as enunciated in the Weems case and as enforced in the Pico case. As minor constructions, a local case has held that the prohibition against cruel and unusual punishments does not apply to such penalty as banishment, which, though unusual, is not cruel.[468] Another case has reached the conclusion that the penalties prescribed for violations of Act 98 of the Philippine Commission are neither excessive, nor cruel and unusual in the sense in which those words are used in the organic legislation enforced in the Islands.[469]

§ 137. Unreasonable searches and seizures; warrants.

Philippines.	*United States.*
"That the right to be secure against unreasonable searches and seizures shall not be violated." (President's Instructions to the Philippine Commission.)	"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon prob-
"That the right to be secure	

[468] Legarda *v.* Valdez (1902) 1 Phil. 146.

[469] Fisher *v.* Yangco Steamship Company (1915) XIII O. G. 2076. As two of many other examples, death by hanging or electricity is not a cruel and unusual punishment; vasectomy can be performed. See 8 R. C. L. pp. 264, 268 etc.

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against unreasonable searches and seizures shall not be violated." (Philippine Bill, sec. 5, par. 11.)

"That the right to be secure against unreasonable searches and seizures shall not be violated." (Philippine Autonomy Act, sec. 3, par. 11.)

"That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." (Philippine Bill, sec. 5, par. 18.)

"That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." (Philippine Autonomy Act, sec. 3, par. 18.)

able cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (United States Constitution, Fourth Amendment.)

"A man's house is his castle" is a maxim of all civilized peoples protected with solicitous care by many constitutions. A passage in Chatham's eloquent speech on General Warrants is classic—"The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." [470] Executive officers shall not be permitted to abuse their authority or to intrude without warrant on private property. In the earliest of two Philippine leading cases Mr. Justice Johnson said:

"The inviolability of the home is one of the most fundamental of all the individual rights declared and

[470] Quoted in U. S. *v.* De los Reyes (1911) 20 Phil. 467, 473.

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recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.

"The privacy of the home—the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in rare cases—has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guarantee to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of his forces dare to cross the threshold of even the humblest tenement without its owner's consent." [471]

When the fourth amendment to the United States Constitution was carried into the Philippine Organic Acts, it was divided into two parts. This division and the slight change in phraseology have undoubtedly not altered the effect, so that English and American principles would still control.[472]

The nature and history of the prohibition is most exhaustively discussed by Lord Camden in Entick *v.* Carrington, reported at length in 19 Howell, St. Tr., 1029

[471] U. S. *v.* Arceo (1904) 3 Phil. 381, 384.
[472] See U. S. *v.* Wilson (1905) 4 Phil. 317.

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(decided in 1765), and "the law as expounded by him has been regarded as settled from that time to this"—and by Mr. Justice Bradley in Boyd *v.* United States.[473] In the second Philippine leading case of United States *v.* De los Reyes[474] in which appears extensive quotations from Cooley's Constitutional Limitations, Viada's Commentaries on the Penal Code, and other American and Spanish authorities, the general American rule is stated by Mr. Justice Moreland to be as follows: "No public official or other person in any country where that portion of the Constitution of the United States against searches and seizures or similar provision is in force, has the right to enter the premises of another without his consent for the purpose of search or seizure without first being provided with the proper search warrant for the purpose, obtained in the manner provided by law." Applied directly to the Philippines, "No one can enter the dwelling house of another in these Islands, without ren-

[473] 116 U. S. 616, 626, 29 L. Ed. 746 (1886) describing the case of Entick *v.* Carrington above mentioned.

[474] 20 Phil. 467 (1911). The court quotes, among others, from the case of McClurg *v.* Brenton (1904) 123 Iowa, 368, where the court, speaking of the right of an officer to enter a private house to search for stolen goods, said:

"The right of the citizen to occupy and enjoy his home, however mean or humble, free from arbitrary invasion and search, has for centuries been protected with the most solicitous care by every court in the English-speaking world, from Magna Charta down to the present, and is embodied in every bill of rights defining the limits of governmental power in our own republic.

"The mere fact that a man is an officer, whether of high or low degree, gives him no more right than is possessed by the ordinary private citizen to break in upon the privacy of a home and subject its occupants to the indignity of a search for the evidence of crime, without a legal warrant procured for that purpose. No amount of incriminating evidence, whatever its source, will supply the place of such warrant. At the closed door of the home, be it palace or hovel, even blood-hounds must wait till the law, by authoritative process, bids it open."

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dering himself liable under the law, unless he has the express consent of the owner and unless the one seeking entrance comes within some of the exceptions dictated by the law or by a sound public policy." [475] Corporations are protected as well as individuals.[476]

Some qualifications of the absolute rule regarding the inviolability of the dwelling should be set down. One such exception is article 492 of the Penal Code exempting from punishment "any person who enters another's dwelling for the purpose of preventing or evading some serious harm to himself, the occupants of the dwelling, or a third person, nor shall it be applicable to any person who enters a dwelling for the purpose of rendering some service to humanity or justice." Another exception is that a man may not use his "castle as a citadel for aggression against his neighbors, nor can he within its walls create such disorder as to affect their peace." So in the case where the quoted words appear, the court thrown back on the common law powers of a policeman held that "in the absence of any other disposition in the statutes or in the local ordinances, a duly appointed police officer in these Islands has those powers which, under the common law of England and America, belong to a peace officer, and among them the power to arrest without warrant for offenses of this nature committed in his presence." [477] The Charter of the city of Manila (sec. 2435 Administrative Code) permits peace officers to "pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace; to arrest or cause

[475] U. S. *v.* Arceo (1904) 3 Phil. 381, 385.

[476] Hale *v.* Henkel (1906) 201 U. S. 43, 50 L. Ed. 652.

[477] U. S. *v.* Vallejo (1908) 11 Phil. 193, 195, 197. See also U. S. *v.* Wilson (1905) 4 Phil. 317; IV Op. Atty. Gen. P. I. 653 (suspension of gambling).

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to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view; in such pursuit or arrest to enter any building, ship, boat, or vessel, or take into custody any person therein suspected of being concerned in such crime or breach of the peace, and any property suspected of having been stolen." Notwithstanding, a policeman who, without warrant, arrests for a misdemeanor a person who has not committed any misdemeanor commits the crime of *coacción*.[478] Another proviso gives the authorities the right to compel entrance to dwelling houses against the will of the owners for sanitary purposes. "The government has this right upon grounds of public policy. It has a right to protect the health and lives of all its people."[479] Municipal ordinances usually give sanitary inspectors and other officers such authority between certain specified hours.[480] Finally is a special case permitting officers to search for taxable property. The Internal Revenue Law of 1914 recognizes this prerogative by providing: "Any officer or agent of internal revenue may in the discharge of his official duties enter any house, building, or place where articles subject to an internal-revenue tax are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine or discover the same."[481] The Attorney-General was of the opinion that a somewhat similar section of the old law was not in conflict with the provisions of the Philippine Bill, the Penal Code, or any other law in force in these Islands.[482]

[478] U. S. *v.* Alexander (1907) 8 Phil. 29, following U. S. *v.* Ventosa (1906) 6 Phil. 385.

[479] U. S. *v.* Arceo (1904) 3 Phil. 381, 384.

[480] See for example secs. 663, 664, 665, Revised Ordinances, City of Manila, of 1908.

[481] Act. 2339, sec. 122. Compare with secs. 326, 327, Customs Administrative Act (Act 355).

[482] III Op. Atty. Gen. P. I. 174.

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A search warrant is defined by our Code of Criminal Procedure to be "an order in writing, issued in the name of the United States, signed by a judge or a justice of the peace, and directed to a peace officer, commanding him to search for personal property and bring it before the court." [483] (Sec. 95.) It may issue upon either of two grounds: 1. When the property was stolen or embezzled; and 2. When it was used or when the intent exists to use it as the means of committing a felony. (Sec. 96.) To make the matter stronger the Code provides: "A search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searched and the person or thing to be seized." (Sec. 97.) Other safeguards are thrown around the search warrant. In general the statute is in accord with the American principles of Criminal Procedure.[484] The warrant will always be construed with the utmost strictness.

As to the portion of the clause reading: "No warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized," our Supreme Court has said that it cannot "be held to apply to all criminal cases. . . . It is probable that the article was intended to apply to cases where an arrest without a warrant was not allowed and in which it was necessary that a warrant should be issued in order to get the accused person before the court." [485] The Court again says that "the question whether 'probable cause' exists or not must depend upon the judgment and discretion of the judge or magistrate issuing the warrant. . . . It simply means that *sufficient facts must be*

[483] See G. O. 58, secs. 95-106.

[484] See Cooley's Constitutional Limitations, 7th Ed., pp. 424 *et seq.* and I Bishop's New Criminal Procedure, 2d Ed., Ch. XVI.

[485] U. S. *v.* Wilson (1905) 4 Phil. 317, 323, 324.

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presented to the judge or magistrate issuing the warrant to *convince him,* not that the particular person has committed the crime, *but that there is probable cause for believing that the person whose arrest is sought committed the crime charged."*[486] The functions of determining that probable cause exists for the arrest of a person accused is only *quasi*-judicial and can for instance, be delegated to a prosecuting attorney.[487]

An officer is protected by his warrant so long as he does not exceed the command. The Penal Code punishes those who enter the dwelling house, without permission or without lawful authority.[488] And the Code of Criminal Procedure punishes "any person who shall procure a search warrant maliciously and without probable cause, and any officer who shall unlawfully exceed his authority or use unnecessary severity in executing the same." (Sec. 106.)

§ 138. Treason.

Philippines.	*United States.*
"Every person, resident in the Philippine Islands, owing alle-	"Treason against the United States shall consist only in levy-

[486] U. S. *v.* Ocampo (1910) 18 Phil. 1, 41, 42, italics those of court, affirmed on appeal, followed in U. S. *v.* Grant (1910) 18 Phil. 122. "Probable cause may be defined as such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his action, and the means taken in prosecuting it, are legally just and proper." Burton *v.* St. Paul, M. & M. Ry. Co. (1885) 33 Minn. 189. Quoted in U. S. *v.* Addison (1914) 28 Phil. 566, 570.

[487] Ocampo *v.* U. S. (1914) 234 U. S. 91, 58 L. Ed. 1231.

[488] Arts. 205 *et seq.* See U. S. *v.* Macaspac (1907) 9 Phil. 207; U. S. *v.* De los Reyes (1911) 20 Phil. 467, containing commentaries by Viada and Groizard. Art. 491. U. S. *v.* Arceo (1904) 3 Phil. 381. See further U. S. *v.* Ostrea (1903) 2 Phil. 93; U. S. *v.* Samson (1905) 4 Phil. 123; U. S. *v.* Agas (1905) 4 Phil. 129; U. S. *v.* Rijano (1905) 5 Phil. 215; U. S. *v.* Clauck (1906) 6 Phil. 486; U. S. *v.* Dionisio (1908) 12 Phil. 283; U. S. *v.* Abanto (1910) 15 Phil. 223; U. S. *v.* Gamilla (1910) 15 Phil. 425; and other cases *re* forcible entry of a dwelling.

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giance to the United States or the Government of the Philippine Islands, who levies war against them or adheres to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, is guilty of treason, and, upon conviction, shall suffer death, or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars." (Act 292 of the Philippine Commission entitled "An Act defining the crimes of treason, insurrection, sedition, conspiracies to commit such crimes, seditious utterances, whether written or spoken, the formation of secret political societies, the administering or taking of oaths to commit crimes, or to prevent the discovering of the same, and the violation of oaths of allegiance, and prescribing the punishment therefor.") [489]

"No person in the Philippine Islands shall, under the authority of the United States, be convicted of treason by any tribunal, civil or military, unless on the testimony of two witnesses to the same overt act, or on confession in open court." (Act of Congress, March 8, 1902, sec. 9; 32 Stat. 55; U. S. Compiled Statutes (1913) sec. 3811.)

ing war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted." (United States Constitution, art. III, sec. 3.)

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason." (U. S. Criminal Code, sec. 1; U. S. Compiled Statutes (1913), sec. 10165.)

"Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale of conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States." (U.

[489] See further the remaining sixteen sections, as amended, of Act 292, and interpretative decisions of the Supreme Court of the Philippines.

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S. Crim. Code, sec. 2; U. S. Compiled Statutes (1913), sec. 10166.) [490]

Our Insular law defining and punishing treason, insurrection, and sedition is practically a reproduction of sections of the United States Criminal Code—the latter based on the United States Constitution—and the provisions of the Constitution concerning treason being taken from the Statute of Treasons, 25 Edw. III. So that the well-recognized meaning of the terminology used in the United States and Great Britain is adopted.[491] An actual levying of war against the United States is the principal ingredient of the definition of treason.[492]

As to the rule of evidence prescribed for the Philippines by the Act of Congress, conviction for treason can only be secured on the testimony of two witnesses to the same overt act or on confession in open court. The principal case construing this section naturally held that the testimony of one witness is insufficient to support a conviction for the crime of treason—and further that "the confession there mentioned means a confession of guilt. The section cannot be extended so as to include admissions of facts made by him in giving his testimony after a plea of not guilty, from which admissions of his guilt can be inferred." [493]

[490] See further sections 3-8, U. S. Crim. Code—sections 10167-10172 U. S. Compiled Statutes (1913). These sections contain the words "or in any place subject to the jurisdiction" of the United States, and so have force in the Philippines. U. S. statute law pertaining to treason is described in U. S. *v.* Lagnason (1904) 3 Phil. 472.

[491] U. S. *v.* Lagnason, *id.*

[492] *Ex parte* Bollman (1807) 4 Cranch, 75, 2 L. Ed. 554, and generally 2 Willoughby on the Constitution, pp. 833 *et seq.*

[493] U. S. *v.* Magtibay (1903) 2 Phil. 703. See also U. S. *v.* De los Reyes (1904) 3 Phil. 349.

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§ 139. Imprisonment for debt.

Philippines.	*United States.*
"That no person shall be imprisoned for debt." (Philippine Bill, sec. 5, par. 6.) "That no person shall be imprisoned for debt." (Philippine Autonomy Act, sec. 3, par. 6.)	(State Constitutions.)

The humane prohibition that no person shall be imprisoned for debt is to be found in most State Constitutions.[494] As to the Philippines, the inhibition does not go so far as to apply to taxes; and although now not generally allowed, the remedies for the collection of taxes may include arrest, if the law shall so provide. So section 165 of the Internal Revenue Law of 1914 (Act 2339), authorizing imprisonment for delinquency in the payment of cedula taxes, is not invalid.[495] Also, while the penal laws of the Philippines [496] provide for subsidiary imprisonment until the fine is paid or the pecuniary liabilities are satisfied, this does not constitute imprisonment for debt. In the case of Freeman *v.* United States, in error to the Supreme Court of the Philippines, Mr. Justice Day delivering the opinion of the United States Supreme Court said:

"Statutes relieving from imprisonment for debt were not intended to take away the right to enforce criminal statutes and punish wrongful embezzlements or conver-

[494] See Stimson, Federal and State Constitutions, sec. 80; U. S. Revised Statutes, sec. 990—U. S. Compiled Statutes (1913) sec. 1636; and Carr *v.* State (1895) 34 L. R. A. 634, and extensive note thereunder.

[495] Cooley on Taxation, 3d Ed., pp. 21, 847, cited in Report of a Committee of the Philippine Commission of November 18, 1915, relative to the constitutionality of section 165 of Act 2339.

[496] Penal Code, various articles in connection with Act 1732.

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sions of money. It was not the purpose of this class of legislation to interfere with the enforcement of such penal statutes, although it provides for the payment of money as a penalty for the commission of an offense. Such laws are rather intended to prevent the commitment of debtors to prison for liabilities arising upon their contracts. McCool *v.* State (1864) 23 Ind. 127; Musser *v.* Stewart (1871) 21 Ohio St. 353; Ex parte Cottrell (1882) 13 Neb. 193, 13 N. W. 174; Re Ebenhack (1877) 17 Kan. 618, 622.

"This general principle does not seem to be controverted by the learned counsel for the plaintiff in error, and the argument is, that inasmuch as the money adjudged is to go to the creditor, and not into the public treasury, imprisonment for the non-payment of such sum is an imprisonment for debt. But we think that an examination of the statutes of the Philippines and the judgment of the supreme court shows that the imposition of the money penalty was by way of punishment for the offense committed, and not a requirement to satisfy a debt contractual in its nature, or be imprisoned in default of payment. . . .

"This situation is not changed because the sentence provides for a release from the subsidiary imprisonment upon payment of the money wrongfully converted. The sentence imposed, nevertheless, includes the requirement to pay money because of the conviction of the offense. The requirement that there shall be no imprisonment for debt was intended to prevent the resort to that remedy for the collection of contract debts, and not to prevent the state from imposing a sentence for crime which should require the restoration of the sum of money wrongfully converted in violation of a criminal statute. The nonpayment of the money is a condition upon which the punishment is imposed. State *v.* Nicholson, 67 Md. 1, 8 Atl. 817.

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"We do not think that the sentence and judgment violated the statute providing that no person shall be imprisoned for debt." [497]

§ 140. Due process of law and equal protection of the laws.[498]

Philippines.

"That no person shall be deprived of life, liberty or property without due process of law. . . .

"In the performance of this duty the Commission is enjoined to see that no injustice is done; to have regard for substantial right and equity, disregarding technicalities so far as substantial right permits, and to observe the following rules: That the provision of the treaty of Paris pledging the United States to the protection of all rights of property in the Islands, and as well the principle of our own Government which prohibits the taking of private property without due process of law, shall not be violated; that the welfare of the people of the Islands, which should be a paramount consideration, shall be attained consistently with this rule of property rights; that if it becomes necessary for the public interest of the people of the Islands to dispose of claims to property which the Commission finds to be not law-

United States.

"Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (United States Constitution, fourteenth amendment, sec. 1, portion.)

Also fifth amendment.

[497] 217 U. S. 539, 544, 545, 54 L. Ed. 874 (1910).

[498] See generally McGehee, Due Process of Law; Cooley's Constitutional Limitations, 7th Ed., Ch. XI; Willoughby on the Constitution, Vol. II, Ch. XLVI; 6 R. C. L. pp. 258 *et seq.* 433 *et seq.*

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fully acquired and held, disposition shall be made thereof by due legal procedure, in which there shall be full opportunity for fair and impartial hearing and judgment; that if the same public interests require the extinguishment of property rights lawfully acquired and held, due compensation shall be made out of the public treasury therefor." (President's Instructions to the Philippine Commission.)

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." (Philippine Bill, sec. 5, par. 1.)

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." (Philippine Autonomy Act, sec. 3, par. 1, first sentence.)

The prohibition against depriving any person of life, liberty or property without due process of law, or denying to any person the equal protection of the laws is not new in the constitutional history of the English race. Magna Charta, confirmed on the 19th day of June, 1215, declared that "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land." [499] Neither was due process of law alien to the

[499] Possibly the principle was known before Magna Charta. See Ochoa *v.* Hernandez (1913) 230 U. S. 139, 57 L. Ed. 1427.

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Roman law. In the United States, the fifth amendment to the Constitution acts as a limitation on the powers of the national government and in substance similar provisions in State Constitutions are restraints on the States. While the primary purpose of the fourteenth amendment was to secure the full enjoyment of liberty to the colored race, the provision is not limited to that purpose. In every way, modern civilized government is in marked contrast to the ancient and mediæval in its protection of the individual against arbitrary governmental intrusion. Both the organic law and the statute law of the Philippines shelter these basic rights of man. The article is a restraint on all three departments of our government.

"Person"

is the widest possible term of private law for designating parties who may be affected by any governmental act. It means any human being, whether citizen or alien, without regard to any differences or race, color, or nationality.[500] It includes corporations legally existing within the State.[501]

"Life, liberty, or property."

To these terms might well be added "the pursuit of happiness." Be it not forgotten that the Declaration of Independence commenced with the fundamental proposition that "all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Pursuit of happiness is protected by the liberty in which all men are guaranteed. In the pursuit of

[500] Yick Wo *v.* Hopkins (1886) 118 U. S. 356, 30 L. Ed. 220. See Burgess, Political Science and Constitutional Law, Vol. I, p. 211.

[501] Pembina Mining Co. *v.* Pennsylvania (1888) 125 U. S. 181, 31 L. Ed. 650.

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happiness all vocations, honors, and positions are alike open to every one; in the protection of these rights all are equal before the law.[502]

"Life, liberty, or property" are representative and comprehensive terms intended to cover every right to which a member of the body politic is entitled under the law. As has well been said: "The right to life includes the right of the individual to his body in its completeness and without dismemberment; the right to liberty, the right to exercise his faculties and to follow a lawful avocation for the support of life; the right of property, the right to acquire, possess, and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the state." [503] In another case, it was said: "These terms include the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right freely to buy and sell as others may. Indeed, they may embrace all our liberties, personal, civil, and political, including the rights to labor, to contract, to terminate contracts, and to acquire property. None of these liberties and rights can be taken away, except by due process of law. 2 Story, Const. (5th Ed.) sec. 1950. The rights of life, liberty, and property embrace whatever is necessary to secure and effectuate the enjoyment of those rights." [504] The real meaning back of the article is not that there shall be no interference with life, liberty, and property, but that there shall be no unreasonable or arbitrary interference with these rights. Plainly, many of the other basic principles which we have discussed or will discuss hark back to this prohibition.

[502] 6 R. C. L. p. 258; Cummings *v.* Missouri (1867) 4 Wall. 277, 18 L. Ed. 356; Kalaw, *Teorías Constitucionales,* Ch. XIV.

[503] Bertholf *v.* O'Reilly (1878) 74 N. Y. 509, 515, 30 Am. Rep. 323.

[504] Gillespie *v.* People (1900) 188 Ill. 176, 182, 183, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176.

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"Life"

needs no definition. It is protected by the Moral and the Criminal Law.

"Liberty" [505]

has been authoritatively described as "the greatest of all rights." [506] It means "not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." [507] Liberty and license are not synonymous. Apolinario Mabini once said: "Many talk of liberty without understanding it; many believe that if they have liberty they have complete freedom to do the bad and good alike. Liberty is freedom to do right and never wrong; it is ever guided by reason and the upright and honorable conscience of the individual. The robber is not free, but is the slave of his own passions, and when we put him in prison we punish him precisely because he is unwilling to use true freedom. Liberty does not mean that we shall obey nobody, but commands us to obey those whom we have put in power and acknowledged as the most fit to guide us,

[505] See Burgess' Political Science and Constitutional Law, Vol. I, Book 2, Ch. I; Burgess, The Reconciliation of Government with Liberty.

[506] Crowley *v.* Christensen (1890) 137 U. S. 86, 89, 34 L. Ed. 620, quoted in Case *v.* Board of Health (1913) 24 Phil. 250, 281.

[507] Allgeyer *v.* Louisiana (1897) 165 U. S. 578, 41 L. Ed. 832. See Burgess, Political Science and Constitutional Law, Vol. I, p. 178.

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since in this way we obey our own reason." Liberty, therefore, does not import "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. . . . There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government,—especially of any free government existing under a written Constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." [508] So a person may lawfully be deprived of liberty as a punishment for crime, may be required to appear and testify, may be incarcerated for mental disability, and may be forced to serve in the army.[509] Midway between the extremes lies the true rule, as to which the words of Montesquieu in the Spirit of the Laws have never been improved upon—"Liberty consists in the ability to do what *one ought to desire* and in not being forced to do what one ought *not* to desire. We

[508] Jacobson *v.* Massachusetts (1905) 197 U. S. 11, 49 L. Ed. 643.
[509] 6 R. C. L. p. 265.

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must have continually present to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit, and if a citizen could do what they forbid, he would no longer be possessed of liberty, because all his fellow-citizens would enjoy the same power." [510] Yet at most liberty is a relative term differing with races and civilizations. The idea of sovereignty as found in the United States is its best guaranty. "Where all power is derived from the people, and public functionaries at short intervals deposit it at the feet of the people, to be resumed again only at their own will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger." [511]

"Property."

The right of every man to own property (anything of an exchangeable value), to use it exclusively for his enjoyment, and to transmit it to others is more abstract

[510] See Cooley's Constitutional Limitations, 7th Ed., pp. 483, 484, and notes. Sir William Blackstone says, personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. 1 Bl. Com. 134. "Liberty," says Mr. Webster, "is the creature of law, essentially different from that authorized licentiousness that trespasses on right. It is a legal and a refined idea, the offspring of high civilization, which the savage never understood, and never can understand. Liberty exists in proportion to wholesome restraint; the more restraint on others to keep off from us, the more liberty we have. It is an error to suppose that liberty consists in a paucity of laws. If one wants few laws let him go to Turkey. The Turk enjoys that blessing. The working of our complex system, full of checks and restraints on legislative, executive, and judicial power, is favorable to liberty and justice. Those checks and restraints are so many safeguards set around individual rights and interests. That man is free who is protected from injury." Works, Vol. II, p. 393.

[511] Anderson *v.* Dunn (1821) 6 Wheat. 204, 226, 5 L. Ed. 242.

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than real. The ordinary citizen fondly imagines that over his little patch of ground he is king. How vain is his dream! The city may condemn his flower garden for a park; the State may cut in twain his green pasture with a highway; and a railroad may in turn tear down his ivy covered cottage to build a freight depot. On every turn, the owner is compelled to yield to the general comfort and protection of the community and to a proper regard for the rights of others.[512] Even the right to dispose of his property by will is purely a creature of statute and within legislative control.[513] Property may be constitutionally confiscated for violation of a law.[514] It is in the regulation of property rights that the police power so

[512] Every man has an abstract right to the exclusive use of his own property for his own enjoyment in such manner as he shall choose; but if he should choose to create a nuisance upon it, or to do anything which would preclude a reasonable enjoyment of adjacent property, the law would interfere to impose restraints. He is said to own his private lot to the center of the earth, but he would not be allowed to excavate it indefinitely, lest his neighbor's lot should disappear in the excavation. The abstract right to make use of his own property in his own way is compelled to yield to the general comfort and protection of the community, and to a proper regard to relative rights in others. The situation of his property may even be such that he is compelled to dispose of it, because the law will not suffer his regular business to be carried on upon it. . . . The owner of a lot within the fire limits of a city may be compelled to part with the property because he is unable to erect a brick or stone structure upon it, and the local regulations will not permit one of wood." People *v.* Salem (1870) 20 Mich. 452, 480-483, 4 Am. Rep. 400. See further Commonwealth *v.* Alger (1851) 7 Cush. 53; Mugler *v.* Kansas (1887) 123 U. S. 623, 31 L. Ed. 205. "The right to use one's property for the sole purpose of injuring others is not one of the immediate rights of ownership." Rideout *v.* Knox (1889) 148 Mass. 368, 372, 373, 19 N. E. 390, 2 L. R. A. 81, 12 Am. St. Rep. 560.

[513] U. S. *v.* Perkins (1896) 163 U. S. 625, 41 L. Ed. 287; Magoun *v.* Illinois Trust and Savings Bank (1898) 170 U. S. 283, 42 L. Ed. 1037.

[514] U. S. *v.* Surla (1911) 20 Phil. 163.

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often interferes with private prerogative. As one illustration to be found in Philippine judicial records, the proviso of Ordinance 124 of the city of Manila directing that new buildings "shall abut or face upon a public street or alley, or on a private street or alley which is officially approved" was held not to constitute an invasion of private property rights without due process of law.[515]

The principle becomes more persistent when private property is devoted to a public use. The classic statement of Lord Hale in the Treatise *De Portibus Maris* was that when private property "is affected with a public interest, it ceases to be *juris privati* only." It is then subject to public regulation.[516] "Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is, therefore, affected with a public interest, and is subject to public regulation. . . . Of course such regulations must not have the effect of depriving an owner of his property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or prescribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise. But aside from such constitutional limitations, the determination of the nature and extent of the regulations which should be prescribed rests in the hands of the legislator."[517] In the case in which this quotation appears, it was held that the promulgation and enforcement of a law or regulation requiring Philippine coastwise trading vessels to make provisions for the transportation of the mails when tendered does not, in effect, deprive the owners of property without due process of law. In another case it was

[515] Fabie *v.* City of Manila (1912) 21 Phil. 486.

[516] Munn *v.* Illinois (1877) 94 U. S. 113, 24 L. Ed. 77; Villata *v.* Stanley (1915) XIV O. G. 170.

[517] Villata *v.* Stanley (1915) XIV O. G. 170, 172, following American decisions.

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held that "the power of the Philippine legislator to prohibit and to penalize all and any unnecessary or unreasonable discriminations by common carriers may be maintained upon the same reasoning which justified the enactment by the Parliament of England and the Congress of the United States of the . . . statutes prohibiting and penalizing the granting of certain preferences and discriminations in those countries." [518]

Rates are fixed for public service corporations. In the first instance, this is a legislative function. The legislature may either prescribe definitely the tariff of rates or charges or determine a rule for future observance and then delegate the exercise of such powers to some administrative board. It is under this doctrine that our Board of Public Utility Commissioners is lawfully existent and lawfully performing its duties. The foregoing does not mean that the property of corporations, even if devoted to public use, may be confiscated. As we have heretofore noticed, corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, as well as a denial of the equal protection of the laws.[519] Under a government of law, "the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held." [520] But Act 98 of the Philippine Commission, although construed so as not to permit a steamship company to elect at will whether or not it will engage in a particular business, is not a confiscation of property—a taking without due

[518] Fisher *v.* Yangco Steamship Co. (1915) XIII O. G. 2076, 2081.

[519] Covington & L. Turnpike Road Co. *v.* Sandford (1896) 164 U. S. 578, 41 L. Ed. 560.

[520] Reagan *v.* Farmers' Loan and Trust Co. (1894) 154 U. S. 362, 399, 38 L. Ed. 1014.

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process of law.[521] In ascertaining whether there is confiscation, Mr. Justice Hughes in a recent and well-known case laid down these rules: (1) The basis of calculation is the "fair value of the property" used for the convenience of the public; (2) the ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment, having its basis in a proper consideration of all relevant facts.[522]

"Due process of law."

The equivalent of the phrase "due process of law," according to Lord Coke (2 Inst. 50) is found in the words "law of the land" in Magna Charta. By "law of the land," Daniel Webster said in the definition in his argument before the United States Supreme Court in the Dartmouth College Case (4 Wheat. 518) and adopted by that court—"By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." [523] The principal and true meaning of the phrase, the United States Supreme Court has declared in a case in which the subject is treated exhaustively,[524] has never

[521] Fisher *v.* Yangco Steamship Co. (1915) XIII O. G. 2076.

[522] Minnesota Rate Cases (1913) 230 U. S. 352, 57 L. Ed. 1511.

[523] Quoted and followed by the Supreme Court of the Philippines in U. S. *v.* Ling Su Fan (1908) 10 Phil. 104, 110 (affirmed); Schields *v.* McMicking (1912) 23 Phil. 535 (reversed); and other cases.

[524] Hurtado *v.* California (1884) 110 U. S. 516, 28 L. Ed. 232. See also Jose *v.* Commander of Philippine Squadron (1910) 16 Phil. 62 (Act 627 barring claims not presented within a specified period constitutes due process of law).

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been more tersely and accurately stated than by Mr. Justice Johnson in Bank of Columbia *v.* Okely: "As to the words from Magna Charta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." [524a] In certain cases, we know from our organic or statutory law exactly in what due process of law consists.[525] Outside of this, we must confess that, although volumes devoted entirely to the subject have been written, the constitutional meaning or value of the phrase "due process" remains elusive of comprehension.[526]

A negative analysis brings us closer to the true meaning of the phrase. Due process of law is not a stationary and blind sentinel of liberty. "Any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law." [527] Due process of law is not that the law shall reflect the wishes of all the inhabitants of the State, but simply, "first, that there shall be a law prescribed in harmony with the general powers of the legislative department of the Government; second, that this law shall be reasonable in its operation; third, that it shall be enforced according to the regular methods of procedure prescribed; and fourth, that it shall be applicable alike to all the citizens of the

[524a] 4 Wheat. 235, 4 L. Ed. 559 (1819).

[525] As an example, see Padin *v.* Humphries (1911) 19 Phil. 254.

[526] Twining *v.* New Jersey (1908) 211 U. S. 78, 53 L. Ed. 97; Davidson *v.* New Orleans (1878) 96 U. S. 97, 24 L. Ed. 616.

[527] Hurtado *v.* California (1884) 110 U. S. 516, 28 L. Ed. 232.

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state or to all of a class." [528] Due process of law is not necessarily judicial process. In a leading case followed by our Supreme Court, it was said: "Though 'due process of law' generally implies and includes, actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings (cases cited), yet, this is not universally true." [529] The example given in this case was final process against the body, lands, and goods of public debtors without trial. A citizen's property may be taken by the government in payment of taxes without any judicial proceedings whatsoever. A provision of the Internal Revenue Law (sec. 139) reading "No court shall have authority to grant injunction to restrain the collection of any Internal Revenue Tax" does not violate the due process of law clause.[530] Other examples of due process without judicial proceedings, which find local corroboration, are submission to an administrative board of the final determination of questions of fact or law after a fair hearing, as in customs and immigration cases, where there can only be an appeal to the courts for abuse of authority.[531] The expulsion of aliens by the Governor-General of the Philippines is due process of law.[532] Due process is not denied by mere

[528] U. S. *v.* Ling Su Fan (1908) 10 Phil. 104, 111, affirmed on appeal to the United States Supreme Court.

[529] Den *v.* Hoboken Land and Improvement Co. (1856) 18 How. 272, 15 L. Ed. 372, followed in Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534; Tan Te *v.* Bell (1914) 27 Phil. 354; U. S. *v.* Gomez (1915) XIII O. G. 1628; and other cases.

[530] Rafferty *v.* Churchill (1915) XIV O. G. 383.

[531] Hilton *v.* Merritt (1884) 110 U. S. 97, 28 L. Ed. 83; U. S. ex rel. Riverside Oil Co. *v.* Hitchcock (1903) 190 U. S. 316, 47 L. Ed. 1074. See U. S. *v.* Gomez (1915) XIII O. G. 1628; and of late cases *re* Chinese Immigration Loo Sing *v.* Collector of Customs (1914) 27 Phil. 491; Tan Chin Hin *v.* Collector of Customs (1914) 27 Phil. 521, and generally sec. 124 *supra.*

[532] Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, affirmed on appeal

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error of law or fact in a decision of a board or court.[533] Due process does not require a right of appeal from a trial to a superior court.[534] Affirmatively speaking, vested rights must not be disturbed.[535]

Finally, "in judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or some of these; and, if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law,' but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.'" [536] Therefore, what is due process of law depends on circumstances and varies with the subject-matter and the necessities of the situation.[537]

"Equal protection of the laws."

The equal protection of the laws, the United States Supreme Court has sententiously observed, "is a pledge of the protection of equal laws." [538] It means "that no

to the United States Supreme Court as Tiaco *v.* Forbes (1913) 228 U. S. 549, 57 L. Ed. 960. See Act 2113 of the Philippine Legislature fixing due process of law in cases of expulsion.

[533] *In re* Converse (1891) 137 U. S. 624, 34 L. Ed. 796.

[534] McKane *v.* Durston (1894) 153 U. S. 684, 38 L. Ed. 867; Pittsburgh etc. R. Co. *v.* Backus (1894) 154 U. S. 421, 38 L. Ed. 1031; U. S. *v.* Gomez (1915) XIII O. G. 1628.

[535] Cooley's Constitutional Limitations, 7th Ed., pp. 508 *et seq.*

[536] Davidson *v.* New Orleans (1878) 96 U. S. 97, 24 L. Ed. 616; Hagar *v.* Reclamation Dist. No. 108 (1884) 111 U. S. 701, 28 L. Ed. 569.

[537] Moyer *v.* Peabody (1909) 212 U. S. 78, 53 L. Ed. 410, followed in Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534.

[538] Yick Wo *v.* Hopkins (1886) 118 U. S. 356, 30 L. Ed. 220. See Kalaw, *Teorías Constitucionales,* Ch. XIV; and 5 R. C. L. "Civil Rights" pp. 573 *et seq.* on facts and statutes which concern the United States but not necessarily the Philippines.

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person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances." [539] What may be regarded as a denial of the equal protection of the laws is a question not always easily determined.[540]

The guaranty does not require territorial uniformity.[541] Class legislation discriminating against some and favoring others is prohibited. But classification on a reasonable basis and not made arbitrarily is permitted.[542] The rules governing classification are briefly as follows: It must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only and must apply equally to each member of the class.[543] Nevertheless, "while recognizing to the full extent the impossibility

[539] Missouri *v.* Lewis (1880) 101 U. S. 22, 25 L. Ed. 989.

[540] Connolly *v.* Union Sewer Pipe Co. (1902) 184 U. S. 540, 46 L. Ed. 679.

[541] Ocampo *v.* U. S. (1914) 234 U. S. 91, 58 L. Ed. 1231, following Missouri *v.* Lewis (1880) 101 U. S. 22, 30, 25 L. Ed. 989.

[542] "It is elementary that the contention (denial of the equal protection of the laws) is to be tested by considering whether there is a basis for the classification made by the statute." Finley *v.* California (1911) 222 U. S. 28, 56 L. Ed. 75. "Such classification can not be made arbitrarily." Gulf, C. & S. F. Ry. Co. *v.* Ellis (1897) 165 U. S. 150, 41 L. Ed. 666.

[543] Borgnis *v.* Falk Co. (1911) 147 Wis. 327, 353, 37 L. R. A. (N. S.) 489. "1. The equal-protection clause of the fourteenth amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

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of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other." [544]

§ 141. Slavery, involuntary servitude, and peonage.

Philippines.	*United States.*
"That neither slavery nor involuntary servitude shall exist except as a punishment for crime." (President's Instructions to the Philippine Commission.)	"§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, *or any place subject to their jurisdiction.*
"That neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in said Islands." Philippine Bill, sec. 5, par. 12.)	"§ 2. Congress shall have power to enforce this article by appropriate legislation." (United States Constitution, thirteenth amendment.)
"That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving	"§ 10441. (Crim. Code, Sec. 268.) *Kidnapping; punishment for.*
	"Whoever kidnaps or carries

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Bachtel *v.* Wilson, 204 U. S. 36, 41, 27 Sup. Ct. 243, 51 L. Ed. 357, 359; Louisville & N. R. Co. *v.* Melton, 218 U. S. 36, 30 Sup. Ct. 676, 54 L. Ed. 921; Ozan Lumber Co. *v.* Union County Nat. Bank, 207 U. S. 251, 256, 28 Sup. Ct. 89, 52 L. Ed. 195, 197; Munn *v.* Illinois, 94 U. S. 113, 132, 24 L. Ed. 77, 86; Henderson Bridge Co. *v.* Henderson, 173 U. S. 592, 615, 19 Sup. Ct. 553, 43 L. Ed. 823, 831." Lindsley *v.* Natural Carbonic Gas Co. (1911) 220 U. S. 61, 79, 55 L. Ed. 369.

[544] Cotting *v.* Kansas City Stock Yards Co. (1901) 183 U. S. 79, 103, 46 L. Ed. 92.

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any grant, franchise, or concession from the Government of said Islands, to use, employ, or contract for the labor of persons claimed or alleged to be held in involuntary servitude; and any person, company, or corporation so violating the provisions of this Act shall forfeit all charters, grants, franchises and concessions for doing business in said Islands, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not less than ten thousand dollars." (Philippine Bill, sec. 74, last proviso.)

"That slavery shall not exist in said Islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted. (Philippine Autonomy Act, sec. 3, par. 12.)

"That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving any grant, franchise, or concession from the government of said Islands, to use, employ, or contract for the labor of persons held in involuntary servitude; and any person, company, or corporation so violating the provisions of this Act shall forfeit all charters, grants, or franchises for doing business in said Islands, in an action or proceeding brought for that purpose in any court of competent jurisdiction by any officer of the Philippine Government, or on the complaint

away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or who entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held; or who in any way knowingly aids in causing any other person to be held, sold, or carried away to be held or sold as a slave, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

"§ 10442. (Crim. Code, sec. 269.) *Holding or returning persons to peonage; punishment for.*

"Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

"§ 10433. (Crim. Code, sec. 270.) *Obstructing enforcement of preceding section.*

"Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of the section last preceding, shall be liable to the penalties therein prescribed.

"§ 10444. (Crim. Code, sec. 271.) *Bringing kidnaped person into United States, etc.; punishment for.*

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of any citizen of the Philippines, under such regulations and rules as the Philippine Legislature shall prescribe, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not more than $10,000." (Philippine Autonomy Act, sec. 28, last proviso.)

"Whoever shall knowingly and willfully bring into the United States *or any place subject to the jurisdiction thereof,* any person inveigled or forcibly kidnaped in any other country, with intent to hold such person so inveigled or kidnaped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years." (U. S. Crim. Code, secs. 268-271—U. S. Compiled Statutes (1913) secs. 10441-10444—adopted and modified for the Philippines by Act 2300 of the Philippine Legislature.)[545]

The thirteenth amendment to the United States Constitution and Congressional legislation to enforce this article probably have force in the Philippine Islands.[546] However this may be is not now important, for similar constitutional provisions have been expressly extended to the Islands. The Supreme Court of the Philippines, construing this prohibition of the Philippine Bill in the case of United States *v.* Cabanag, held that, while it operates to nullify any agreement in contravention of it, suppletory

[545] See generally Title 69 (A), Ch. 10, The Slave Trade and Peonage, U. S. Compiled Statutes (1913).

[546] Note italicized words in the thirteenth amendment and in the law quoted under this section heading. See also sec. 104 *supra.*

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legislation is required to give the prohibition criminal effect. Mr. Justice Tracey in the course of the opinion said:

"This constitutional provision is self-acting whenever the nature of a case permits and any law or contract providing for the servitude of a person against his will is forbidden and is void. For two obvious reasons, however, it fails to reach the facts before us:

"First. The employment or custody of a minor with the consent or sufferance of the parents or guardian, although against the child's own will, can not be considered involuntary servitude.

"Second. We are dealing not with a civil remedy but with a criminal charge, in relation to which the Bill of Rights defines no crime and provides no punishment. Its effects cannot be carried into the realm of criminal law without an act of the legislature.

"It is not unnatural that existing penal laws furnish no punishment for involuntary servitude as a specific crime. In the Kingdoms of the Spanish Peninsula, even in remote times, slavery appears to have taken but a surface root and to have been speedily cast out, the institution not having been known therein for centuries. It is only in relation to Spain's possessions in the American Indies that we find regulations in respect to slavery. In general they do not apply in their terms to the Philippine Islands where the ownership of man by his fellow-man, wherever it existed, steadily disappeared as Christianity advanced. Among the savage tribes in remote parts, such customs as flourished were not the subject of legislation but were left to be dealt with by religious and civilizing influences. Such of the Spanish laws as touched the subject were ever humane and radical. In defining slavery, law 1, title 21 of the fourth *Partida* calls it 'a thing against the law of nature;' and rule 2, title 34 of the seventh *Partida* says: 'It is a thing which all men natur-

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ally abhor.' These were the sentiments of the thirteenth century." [547]

An early Act of the Legislative Council of the Moro Province of September 24, 1903, defined the crimes of slave-holding and slave-hunting and prescribed their punishment. Act 2071 of the Philippine Commission, enacted August 7, 1911, constituted further ancillary legislation for the prohibiting and punishing of slavery, involuntary servitude, and peonage in the Mountain Province and the Provinces of Nueva, Vizcaya and Agusan. Act 2300 of the Philippine Legislature of November 28, 1913, covered the subject more comprehensively by confirming existing Spanish legislation applicable to the Philippine Islands and by adopting with necessary modifications sections 268, 269, 270, and 271 of the United States Criminal Code, above quoted. Act 2399 of the Philippine Commission extended the provisions of Act 2300 to the territory inhabited by Moros and other non-Christians. Moreover, under the civil law as held in De los Reyes *v.* Alojado,[548] per Torres J. domestic services are always to be remunerated, and any agreement made in connection with a loan of money, whereby it is stipulated that because of such loan, domestic service shall be gratuitous, is contrary to law and good morals. As a resultant, the Philippine Islands now have a combined Spanish-American law, mostly derived from the latter source, which rigorously punishes slavery, involuntary servitude, and peonage.

Going back then to where we began, we find the American legislation on the subject held to be a valid exercise of the powers granted to Congress.[549] Three things are

[547] 8 Phil. 64, 68, 69 (1907). See also Op. Atty. Gen. P. I. Nov. 19, 1913.

[548] 16 Phil. 499 (1910); Arts. 1255, 1585, etc., Civil Code.

[549] Clyatt *v.* U. S. (1905) 197 U. S. 207, 49 L. Ed. 726; U. S. *v.* McClellan (1904) 127 Fed. 971.

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denounced and penalized—slavery, involuntary servitude, and peonage. Slavery is "the state of entire subjection of one person to the will of another." Servitude is "the state of voluntary or compulsory subjection to a master." In the opinion of the United States Supreme Court from which these definitions are taken, it was said that "all understand by these terms a condition of enforced compulsory service of one to another." [550] Peonage "is a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness." [551] The denunciation reaches every race and every individual. But the prohibition and its ancillary law only have to do with slavery and its incidents.[552] Freedom, not social or political equality, was given. However, many unsuccessful attempts have been made to extend the meaning, as for example, so as to include laws denying equal accommodations.[553] It would, moreover, be a perversion of the law to attempt to apply it to an ordinary case of restraint of personal liberty, to the obligation of a child to its parents, or of an apprentice to his master, and to other extreme cases.[554] Nor does the prohibition cover the situation of seamen, although their contracts provide for compulsory fulfillment.[555] The compulsory requirement of labor upon the public highways to

[550] Hodges *v.* U. S. (1906) 203 U. S. 1, 16, 51 L. Ed. 65, following Webster's Dictionary.

[551] Clyatt *v.* U. S. *id;* U. S. *v.* Cole (1907) 153 Fed. 801, 805. "One fact existed universally; all were indebted to their master. This was the cord by which they seemed bound to their master's service." Jaremillo *v.* Romero (1857) 1 N. Mex. 190, 194.

[552] Civil Rights Cases (1883) 109 U. S. 3, 27 L. Ed. 837, explains the province of the 13th and 14th amendments.

[553] Civil Rights Cases *id.* See Slaughterhouse Cases (1873) 16 Wall. 36, 21 L. Ed. 394, and Plessy *v.* Ferguson (1896) 163 U. S. 537, 41 L. Ed. 256.

[554] U. S. *v.* Eberhart (1899) 127 Fed. 252, and other cases.

[555] Robertson *v.* Baldwin (1897) 165 U. S. 275, 41 L. Ed. 715.

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be found in American and Philippine law does not violate the prohibition against involuntary servitude. "There are certain services which may be commanded of every citizen by his government, and obedience enforced thereto." [556] The prohibition, finally, safeguards the freedom of labor "upon which alone can enduring prosperity be based." [557]

§ 142. Freedom of speech and press; assembly and petition.[558]

Philippines.

"That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances." (President's Instructions to the Philippine Commission.)

"That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble

United States.

"Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." (United States Constitution, first amendment, portion.)

(State Constitutions.)[559]

[556] *In re* Dassler (1886) 35 Kan. 678, 12 Pac. 130.

[557] "We conclude that section 4730, as amended, of the Code of Alabama, insofar as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property received, *prima facie* evidence of the commission or the crime which the section defines, is in conflict with the thirteenth amendment, and the legislation authorized by that amendment, and is therefore invalid." Bailey *v.* Alabama (1911) 219 U. S. 219, 55 L. Ed. 191. Act 2098 of the Philippine Legislature is entitled "An Act relating to contracts of personal service and advances thereunder, and providing punishment for certain offenses connected therewith." The constitutionality of this Act is now before the Supreme Court for decision.

[558] See generally Cooley's Constitutional Limitations, 7th Ed., Ch. 12, and pp. 497, 498; 6 R. C. L. pp. 254-258; Newel on Slander and Libel.

[559] Substance given in Cooley's Constitutional Limitations, 7th Ed., pp. 596-599, note.

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and petition the Government for redress of grievances." (Philippine Bill, sec. 5, par. 13.)

"That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." (Philippine Autonomy Act, sec. 3, par. 13.)

Freedom of speech and press.

It was Wendell Phillips who asked regarding free speech: "Who can adequately tell the sacredness and value of free speech? Who can fitly describe the enormity of the crime of its violation? Free speech, at once the instrument and the guaranty and the bright consummate flower of all liberty." It was Judge Cooley who said of the newspaper: "The newspaper is . . . one of the chief means for the education of the people. The highest and the lowest in the scale of intelligence resort to its columns for information; it is read by those who read nothing else, and the best minds of the age make it the medium of communication with each other on the highest and most abstruse subjects. Upon politics it may be said to be the chief educator of the people; its influence is potent in every legislative body; it gives tone and direction to public sentiment on each important subject as it arises; and no administration in any free country ventures to overlook or disregard an element so prevading in its influence, and withal so powerful." [560] It was Lord Bryce who wrote of public opinion: "Towering over Presidents and State governors, over Congress and State legislatures, over conventions and the vast machinery of party, public opinion stands out, in the United States, as

[560] Cooley's Constitutional Limitations, 7th Ed., p. 641.

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the great source of power, the master of servants who tremble before it." [561] Who now knowing the rising force of public opinion in these Islands and the influence of an unfettered press, both privileges long desired under Spain, can doubt that in these respects the Philippines will emulate the United States and other enlightened countries and lend reflected glory to the words of Phillips, Cooley, and Bryce? [562]

The main purpose of the first amendment to the United States Constitution has been declared to be "to prevent all such *previous restraints* upon publications as had been practised by other governments." [563] No new rights were created. Existing rights were only recognized with a further provision that they shall not be abridged or violated. "The constitutional liberty of speech and of the press," as Judge Cooley says he understands it, "implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offence, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals." [564]

The freedom of speech and of the press is not the equivalent of unbridled license to say or print anything.

[561] Bryce, The American Commonwealth, new and revised edition, Vol. II, Chs. 76-83 at p. 267, quoted in Duarte *v.* Dade (1915) XIII O. G. 2006.

[562] But in the dissenting opinion of Carson J. in U. S. *v.* Bustos 13 Phil. 690, 715, written in 1909, appears the following: "in these Islands . . . where, more especially in the provinces, there is no intelligent public opinion with its salutary and restraining influence on local officials."

[563] Patterson *v.* Colorado (1907) 205 U. S. 454, 51 L. Ed. 879; Commonwealth *v.* Blanding (1825) 3 Pick. (Mass.) 304, 15 Am. Dec. 214.

[564] Cooley's Constitutional Limitations, 7th Ed. pp. 604, 605.

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The proverb runs: "A good name is rather to be desired than great riches, and loving favor than silver and gold." The lines of the poem are:

"Who steals my purse steals trash;
"But he that filches from me my good name,
"Robs me of that which not enriches him
"And makes me poor indeed." [565]

The sound and authoritative legal principle is the liberty of speech and press, not its licentiousness.[566] So the constitutional provisions do not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation.[567] Certain restrictions are necessary in order to circumscribe the golden medium between the one extreme of a despotism crushing out free speech and the other extreme of calumny and slander. Our constitutional provision guarantees the right on the one hand; our libel law (Act 277) on the other is perhaps overly stringent. But the provisions of section 5 of Act 292, defining the crime of sedition, must not be interpreted so as to abridge the freedom of speech and the right of the people peaceably to assemble and petition the Government for redress of grievances.[568]

The public acts of public men may lawfully be made

[565] Quoted by Judge Jenkins in Worcester *v.* Ocampo (1912) 22 Phil. 42, 73. In the same case the Supreme Court quotes from Judge Jenkins, as follows: *"The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty, or property.* It is one of those rights necessary to human society, that underlie the whole scheme of human civilization. The respect and esteem of his fellows are among the highest rewards of a wellspent life vouchsafed to man in this existence. The hope of it is the inspiration of youth and its possession is a solace in later years." p. 98. See also Perfecto *v.* Contreras (1914) 28 Phil. 538.

[566] Commonwealth *v.* Blanding (1825) 3 Pick. (Mass.) 304, 15 Am. Dec. 214.

[567] Robertson *v.* Baldwin (1897) 165 U. S. 275, 326, 41 L. Ed. 715.

[568] U. S. *v.* Apurado (1907) 7 Phil. 422, syllabus.

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the subject of comment and criticism, their fitness for office discussed, and their actions, character, and motives challenged, when so made in good faith should be and is privileged.[569] For example, the case of United States *v.* Galeza [570] held that it is the right and duty of a citizen to make a complaint of any misconduct on the part of public officials which comes to his notice to those charged with supervision over them. Such a communication is qualifiedly privileged and the author is not guilty of libel, even though the charges contained therein are not substantiated upon investigation, unless it be shown that the charges were made maliciously and without any reasonable grounds for believing them to be true. Such a complaint should be addressed solely to some official having jurisdiction to inquire into the charges or power to redress the grievance or some duty to perform or interest in connection therewith. However, there must be a limit to irresponsible charges against public men. In a number of cases, two of which we quote from, our Supreme Court has said:

"The interests of society require that immunity should be granted to the discussion of public affairs and that all acts and matters of a public nature may be freely pub-

[569] U. S. *v.* Sedano (1909) 14 Phil. 338; Cooley's Constitutional Limitations, pp. 616-628.

[570] XIII O. G. 1540 (1915). The splendid dissenting opinion of Carson J. in U. S. *v.* Bustos (1909) 13 Phil. 690, 715, had previously given the rule, as follows: "A conditional or qualified privilege exists in these Islands as to such communications, with no greater restrictions or limitations attached thereto than have been placed upon the like privilege in England and the United States. The limitations and restrictions uniformly placed on the privilege in those jurisdictions are, first, that such complaints must be made to a functionary having authority to redress the grievances complained of; and, second, that they must be made in good faith, and must not be actuated by actual or express malice." See further Newell on Slander and Libel, 3d Ed., secs. 600, 601.

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lished with fitting comments and strictures; but they do not require that the right to criticize the public acts of public officers shall embrace the right to base such criticisms upon false statement of fact, or to attack the private character of the officer, or to falsely impute to him malfeasance or misconduct in office." [571]

"Men have the right to attack, rightly or wrongly, the policy of a public official with every argument which ability can find or ingenuity invent. They may show, by argument good or bad, such policy to be injurious to the individual and to society. They may demonstrate, by logic true or false, that it is destructive of human freedom and will result in the overthrow of the nation itself. But the law does not permit men falsely to impeach the motives, attack the honesty, blacken the virtue, or injure the reputation of that official. . . .

"Men may argue, but they may not traduce. Men may differ, but they may not, for that reason, falsely charge dishonesty. Men may look at policies from different points of view and see them in different lights, but they may not, on that account, falsely charge criminality, immorality, lack of virtue, bad motives, evil intentions, or corrupt heart or mind. Men may falsely charge that policies are bad, but they cannot falsely charge that men are bad." [572]

Courts are subject to the same criticism as other people, after a case is finished. But if a court regard a publication concerning a matter of law pending before it as tending to interfere with the course of justice by premature statement, argument, or intimidation, it may punish it as a contempt.[573] So an attorney may criticize the courts so long as his criticisms are made in good faith and in respectful language. But if he falsely, purposely, and

[571] Carson J. in U. S. *v.* Sedano (1909) 14 Phil. 338, 343.
[572] Moreland J. in U. S. *v.* Contreras (1912) 23 Phil. 513, 516, 517.
[573] Patterson *v.* Colorado (1907) 205 U. S. 454, 51 L. Ed. 879.

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maliciously attack the integrity of the courts and the judges thereof with a design to willfully, purposely, and maliciously misrepresent the courts and bring them into disrepute, the attorney violates his duties and obligations and may be disbarred.[574] The rule as to publication of judicial proceedings in newspapers, is said by the United States Supreme Court in a case coming from the Philippines, to be nowhere better stated than by Judge Cooley, namely: "It seems to be settled that a fair and impartial account of judicial proceedings, which have not been *ex parte,* but in the hearing of both parties, is, generally speaking, a justifiable publication. But it is said that if a party is to be allowed to publish what passes in a court of justice, he must publish the whole case, and not merely state the conclusion which he himself draws from the evidence. A plea that the supposed libel was, in substance, a true account and report of a trial has been held bad; and a statement of the circumstances of a trial as from counsel in the case has been held not privileged. The report must also be strictly confined to the actual proceedings in court, and must contain no defamatory observations or comments from any quarter whatsoever, in addition to what forms strictly and properly the legal proceedings." [575] Publishing an article based upon a complaint filed in a Court of First Instance before any judicial action is taken thereon, is not privileged as a report of a judicial proceeding.[575a]

There are a number of cases of absolute or qualified privilege arising because of the occasion on which made.

[574] State Bar Commission *v.* Sullivan (1912) 35 Okla. 745, 131 Pac. 703.

[575] Cooley's Constitutional Limitations, 7th. Ed., p. 637 quoted by Day J. in Dorr *v.* U. S. (1904) 195 U. S. 138, 11 Phil. 706. See also Act 277, sec. 7.

[575a] Choa Tek Hee *v.* Philippine Publishing Co. (1916) XIV O. G. 1104.

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Parliamentary freedom is one.[576] Others protect witnesses giving evidence in the course of judicial proceedings, executives for official utterances, judges of courts while acting within the limits of their jurisdiction, parties and counsel to a cause, and there are additional instances named in the text-books.[577]

Assembly and petition.

Almost the only general discussion of this subject by the United States Supreme Court is found in the case of United States *v.* Cruikshank in which Mr. Chief Justice Waite said:

"The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is and always has been one of the attributes of citizenship under a free government. It 'derives its source,' to use the language of Chief Justice Marshall, in Gibbons *v.* Ogden, 9 Wheat. 211, 'from those laws whose authority is acknowledged by civilized man throughout the world.' It is found wherever civilization exists. It was not, therefore, a right granted to the people by the Constitution. The Government of the United States, when established, found it in existence, with the obligation on the part of the States to afford it protection. . . .

"The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." [578]

[576] U. S. Constitution, Art. 1, sec. 6; Philippine Autonomy Act, sec. 18; Election Law (Act 1582) sec. 5; Kilbourn *v.* Thompson (1881) 103 U. S. 168, 26 L. Ed. 377; Coffin *v.* Coffin (1808) 4 Mass. 1, 3 Am. Dec. 189. See sec. 120 *supra.*

[577] Cooley's Constitutional Limitations, 7th Ed., pp. 629-633; 25 Cyc. pp. 375-412.

[578] 92 U. S. 542, 23 L. Ed. 588 (1876). See of the State decisions

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The right of assembly and petition results from the very nature and structure of republican institutions.[579] Lieber says: "It may right many a wrong, and the deprivation of it would at once be felt by every freeman as a degradation. The right of petitioning is indeed a necessary consequence of the right of free speech and deliberation,—a simple, primitive, and natural right. As a privilege it is not even denied the creature in addressing the Deity."[580] The right is of most importance for political purposes and as a means to redress or present grievances. Assembly is subject to reasonable regulations by law.[581] But a meeting of laborers merely to demand an increase in wages is not unlawful.[582] The scope of the right of petition is part of the larger right of freedom of speech and will be found discussed in that connection. The records of the Philippine Legislature disclose that petitions are frequently made use of by the inhabitants of the Islands.

§ 143. Religious liberty.

Philippines.	*United States.*
"The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion." (Treaty of Paris, art. X.)	"No religious test shall ever be required as a qualification to any office or public trust under the United States." (United States Constitution, art. 6, par. 3, last portion.)
"That no law shall be made respecting an establishment of religion or prohibiting the free ex-	"Congress shall make no law respecting an establishment of religion, or prohibiting the free ex-

Commonwealth *v.* Abrahams (1892) 156 Mass. 57, 30 N. E. 79; State *ex rel.* Ragan *v.* Junkin (1909) 85 Neb. 1, 122 N. W. 473, 23 L. R. A. (N. S.); State *ex rel.* Van Alstine *v.* Frear (1910) 142 Wis. 320, 336-339, 125 N. W. 961, 20 Ann. Cas. 633.

[579] Story on the Constitution, sec. 1894.

[580] Civil Liberty and Self Government, Ch. 12.

[581] Commonwealth *v.* Abrahams (1892) 156 Mass. 57, 30 N. E. 79.

[582] I Op. Atty. Gen. Porto Rico 124.

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ercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed. . . . That no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the Islands; that, upon the other hand, no minister of religion shall be interfered with or molested in following his calling, and that the separation between state and church shall be real, entire and absolute." (President's Instructions to the Philippine Commission.)

"That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." (Philippine Bill, sec. 5, par. 14.)

"That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, ercise thereof." (United States Constitution, First Amendment, to first semicolon.)

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or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such." (Philippine Autonomy Act, sec. 3, par. 14.)

American Constitutions have established religious toleration and religious equality. Church and State are separate. One can worship his Maker according to the dictates of his conscience; and one is free not to worship at all. One sect is not favored by the State over any other sect.

Mr. Justice Miller of the United States Supreme Court in two cases explained the scope of the constitutional provisions against restraint of religious freedom and the restrictions which are legally permissible. In Watson *v.* Hones he said: "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." [583] Again, in Davis *v.* Beason he said that the first amendment to the Constitution "was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. . . . It was never intended or supposed that the Amendment could be invoked as a protection

[583] 13 Wall 679, 728, 20 L. Ed. 666 (1872).

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against legislation for the punishment of acts inimical to the peace, good order and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." [584] Judge Cooley summarizes those things which are not lawful under any of the American Constitutions thus: 1. Any law respecting an establishment of religion; 2. Compulsory support by taxation or otherwise of religious instruction; 3. Compulsory attendance upon religious worship; 4. Restraint upon the free exercise of religion according to the dictates of the conscience; 5. Restraint upon the expression of religious belief.[585] But there are no prohibitions against the solemn recognition of a Supreme

[584] 133 U. S. 333, 342, 33 L. Ed. 637 (1889). "Mr. Jefferson, in reply to an address to him by the committee of the Danbury Baptist Association, 8 Jeff. Works, 113, took occasion to say: 'Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the Nation in behalf of the rights of conscience, I shall see, with sincere satisfaction, the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.' Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." Reynolds *v.* U. S. (1878) 98 U. S. 145, 164, 25 L. Ed. 244.

[585] Cooley's Constitutional Limitations, 7th Ed., pp. 663-665.

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Being. Blasphemy is punished as a crime. The prevailing worship is judicially recognized as being Christianity.[586] Sunday laws are upheld.[587] Church property can be exempted from taxation. And there are other qualifying rules.[588]

These principles expressly ratified in four documents now apply in the Philippines. Our Supreme Court has said that: "The change of sovereignty and the enactment of the fourteenth paragraph of section 5 of the Philip-

[586] Holy Trinity Church *v.* U. S. (1892) 143 U. S. 457, 36 L. Ed. 226; Vidal *v.* Girard's Executors (1844) 2 How. 127, 198, 11 L. Ed. 205.

[587] Laws forbidding labor on Sunday, save in emergencies, are everywhere upheld. Hennington *v.* Georgia (1896) 163 U. S. 299, 41 L. Ed. 166; Petit *v.* Minnesota (1900) 177 U. S. 164, 44 L. Ed. 716.

[588] Carl Zollman, X Illinois Law Review, Oct. 1915, pp. 190, 208, sums up religious liberty in American law, as follows: "The American citizen is protected in his religious liberty against any act of the Federal government by the United States constitution and against any act of his state government by his State constitution. Under both he is entirely free to formulate any opinion whatsoever in regard to religion, to practice and teach it to others, provided he respects their rights and does not incite to crime or a breach of the peace. In fixing upon forbidden acts the law recognizes the Christian religion as the prevailing religion in this country and punishes blasphemers, Mormons, Christian Scientists, fortune tellers, members of the Salvation Army and others, though the acts which have brought them into conflict with the law have been performed with a religious motive. It fosters religion by affording churches the right to become corporations, by protecting their worship against disturbance, by exempting their property from taxation and by providing for a cessation from work on Sunday. It permits (Illinois excepted) the Bible, or portions of it, to be read in the public schools. It allows the use of the school buildings for Sunday Schools and other forms of religious worship where such use does not conflict with the school laws or regulations and permits churches to lease their buildings to school districts for a consideration. It frowns upon the wearing of denominational garments in the school by teachers and does not suffer pupils to break up the school discipline by absenting themselves from school on purely religious holy days."

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pine Bill caused the complete separation of church and State, and the abolition of all special privileges and all restrictions theretofore conferred or imposed upon any particular religious sect. All became equal in the eyes of the law.[589] Civil Governor Taft in an early opinion said: "The civil government has no power to regulate the internal working or discipline of the church, its creed, its ceremonies, its methods of raising income, the fees charged by the ministers, or its use of its own property, provided, that the ministers or agents of the church in pursuing the purpose of the church do not injure another in his civil rights, to wit, the right of life, liberty, or property, or the rights to which he is entitled as a member of the general public, or do not violate the criminal law." [590]

Insular legislation reinforces these general doctrines. For example, the School Law [591] prohibits any teacher or

[589] U. S. *v.* Balcorta (1913) 25 Phil. 273, 276.

[590] Opinion of July 31, 1901, appearing as note 4, Malcolm's Compiled Municipal Code, p. 120.

[591] Act 72, sec. 16 (Adm. Code, secs. 1821, 1822), reading as follows: "No teacher or other person shall teach or criticise the doctrines of any church, religious sect or denomination, or shall attempt to influence the pupils for or against any church or religious sect in any public school established under this act. If any teacher shall intentionally violate this section, he or she shall, after due hearing, be dismissed from the public service: *Provided, however,* That it shall be lawful for the priest or minister of any church established in the pueblo where a public school is situated, either in person or by a designated teacher of religion, to teach religion for one-half an hour three times a week in the school building to those public school pupils whose parents or guardians desire it and express their desire therefore in writing filed with the principal teacher of the school, to be forwarded to the division superintendent, who shall fix the hours and rooms of such teaching. But no public school teacher shall either conduct religious exercises or teach religion or act as a designated religious teacher in the school building under the foregoing authority, and no pupil shall be required by any public school teacher to attend and receive the religious instruction herein per-

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other person from teaching or criticizing the doctrines of any church or religious denomination, or from attempting to influence the pupils for or against any church or religious sect in any public school; but it permits a priest or minister to teach religion for one-half hour, three times a week, in the public school building to those public school pupils whose parents or guardians desire it and express their desire therefor in writing. The Cemetery Law provides that: "No municipal ordinance or regulation shall be made which shall restrict or interfere with any person in the full exercise of his religious sentiments in respect to the burial of the dead, nor to interfere with any person or persons, organization, church, religious denomination, or sect in maintaining and regulating burial grounds or cemeteries in accordance with their beliefs or customs." [592] So the Attorney-General has held that municipal cemeteries are created for all persons, irrespective of race or religious beliefs, but that private cemeteries are under the control of the owners thereof or their duly authorized representatives.[593] Ecclesiastics can in no case be elected or appointed to a municipal office.[594] "Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day,

mitted. Should the opportunity thus given to teach religion be used by the priest, minister, or religious teacher for the purpose of arousing disloyalty to the United States, or discouraging the attendance of pupils at such public school, of creating a disturbance of public order, or of interfering with the discipline of the school, the division superintendent, subject to the approval of the Director of Education, may, after due investigation and hearing, forbid such offending priest, minister, or religious teacher from entering the public school building thereafter." As to religious instruction in the public schools, see the late cases of Herald *v.* Parish Board (1915) 136 La. 1034; and People *v.* Board of Education (1910) 245 Ill. 334, 92 N. E. 251.

[592] Act 1458, sec. 6; Adm. Code, sec. 893.

[593] 5 Op. Atty. Gen. P. I. 672, citing Circular Letter, Executive Secretary, Jan. 17, 1910, VIII O. G., p. 239.

[594] Act 82, sec. 15; Act 1397, sec. 15; Act 2408, sec. 42 (*c*); Adm. Code, secs. 2121, 2289, 2606 (*c*).

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and Sundays" are recognized as "legal religious holidays." [595] Oaths are taken, although a solemn affirmation can be accepted in lieu thereof; but persons on account of their opinion in matters of religious beliefs are not excluded from being witnesses.[596] Burying grounds, churches and their adjacent parsonages or convents, and lands and buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for private profit are exempted from taxation.[597] As held by the Attorney-General, a municipal council has no power to allow any church or religious organization to use the property of the municipality as a place of worship, or to dedicate to religious purposes any property belonging to the municipality.[598] As held by Civil Governor Taft, "The common council may regulate or prohibit the use of the public streets for religious or other processions if, in the judgment of the council, such processions interfere with the proper use of the streets by the general public, but such regulations or prohibitions should be made only in good faith with a view to the public interest and not to gratify any personal or political feeling, but, on the other hand, the council can not regulate the character of the processions in churches or upon church property." [599] A municipal council can also enact a reasonable ordinance

[595] Act 345, as last amended by Act 2160; Adm. Code, sec. 27.

[596] Adm. Code, sec. 18; G. O. No. 58, The Code of Criminal Procedure, sec. 55.

[597] Act 82, sec. 62; Act 183, sec. 48; Act 1397, sec. 53; Act 1963, sec. 24; Adm. Code, secs. 432, 2350, 2454, 2548.

[598] 2 Op. Atty. Gen. P. I. 486.

[599] Opinion, July 31, 1901, appearing as note 17, Malcolm's Compiled Municipal Code, p. 80. Note 18 following reads as follows: "*Unauthorized restrictions.*—Religious processions and right of freedom of worship should not be unduly restricted. Resolution of Anda, Pangasinan, null and void for this reason. (Op. Gov. Gen. June 8, 1908.) 'The municipal council is not authorized to prohibit peaceable religious processions on public streets, for such a restraint on religious

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regulating, but not prohibiting, the ringing of church bells.[600]

The Treaty of Paris in Article VIII protected the property of all kinds of ecclesiastical bodies. The Roman Catholic Church is recognized by the judiciary as being a juridical person in the Philippines, with power to hold property, and to sue and be sued. In the case of Barlin *v.* Ramirez, Mr. Justice Willard said that the suggestion that the Roman Catholic Church has no legal personality in the Philippines "made with reference to an institution which antedates by almost a thousand years any other personality in Europe, and which existed 'when Grecian eloquence still flourished in Antioch, and when idols were still worshipped in the temple of Mecca,' does not require serious consideration."[601]

liberty finds no place under our present form of government.' (Op. Ex. Sec., Feb. 26, 1910.) A municipal council is not authorized to pass an ordinance absolutely prohibiting or taxing religious street processions with instruments, banners, singing, etc., it being beyond the authority of the municipality to prohibit religious processions and impose a tax upon them. (1 Dillon's Municipal Corporations, p. 396, note 2; 2 Op. Atty. Gen., 161.) The provisions of an ordinance prohibiting and punishing with a fine any person who should carry a religious image through the public streets on a certain day not declared to be a public or religious holiday held void and illegal. (U. S. *v.* Magboo, Court of First Instance, Batangas, Oct. 23, 1908.)" Compare with 1 Op. Atty. Gen. P. I. 236 and 1 Op. Atty. Gen. Porto Rico, 16.

[600] See Malcolm's Compiled Municipal Code, p. 121, note 9, and 1 Op. Atty. Gen. Porto Rico, 68.

[601] 7 Phil. 41, 58 (1906). In accord, Municipality of Ponce *v.* Roman Catholic Apostolic Church of Porto Rico (1908) 210 U. S. 296, 52 L. Ed. 1068; Santos *v.* Holy Roman Catholic Apostolic Church, Parish of Tambobong (1909) 212 U. S. 465, 53 L. Ed. 599; Harty *v.* Sandin (1908) 11 Phil. 450; Government of the Philippine Islands *v.* Roman Catholic Bishop of Nueva Caceres (1915) XIII O. G. 1834; Act 1376 of the Philippine Commission; Zollmann, Classes of American Religious Corporations, XIII Michigan Law Review, May, 1915, pp. 556, 572.

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§ 144. Local government.[602]

Philippines.

"Without hampering them by too specific instructions, they should in general be enjoined, after making themselves familiar with the conditions and needs of the country, to devote their attention in the first instance to the establishment of municipal governments in which the natives of the Islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control which a careful study of their capacities and observation of the workings of native control show to be consistent with the maintenance of law, order, and loyalty. The next subject in order of importance should be the organization of government in the larger administrative divisions, corresponding to counties, departments, or provinces, in which the common interests of many or several municipalities falling within the same tribal lines, or the same natural geographical limits, may best be subserved by a common administration. . . .

"In the distribution of powers among the governments organized by the Commission, the presumption is always to be in favor of the smaller subdivision, so that all the powers which can properly be exercised by the municipal government shall be vested in that government, and all the powers of a more general character which can be exercised by the departmental government shall be vested in that government, and so that in the governmental system which is the result of the process the Central Government of the Islands, following the example of the distribution of powers between the States and the National Government of the United States, shall have no direct administration except of matters of purely general concern, and shall have only such supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers.

"These general rules are to be observed: That in all cases the municipal officers who administer the local affairs of the people are to be selected by the people." (President's Instructions to the Philippine Commission.)

[602] See generally Dillon's Municipal Corporations, 5th Ed.; Cooley's Constitutional Limitations, 7th Ed., Ch. VIII; Bryce, American Commonwealth, Rev. Ed. 1914, Chs. XLVIII-LII; Malcolm's Compiled Municipal Code.

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It is axiomatic that the people of a community are entitled to self-government. No constitution is needed to realize the principle of home rule. But President McKinley made it such for the Philippines by his solicitous injunction to the Commission, above quoted, in behalf of municipal and provincial governments.

Antiquarians tell us of cities with local jurisdiction which existed in very remote periods. Memphis, Thebes, Rome,—even their ruins, proclaim their ancient splendor. Modern cities have not greatly improved upon their organization or activities. All cities the world over have much in common. All face the same questions. Municipal government is the problem of the ages. Was it not M. de Tocqueville who wrote "a nation may establish a system of free government, but without the spirit of municipal institutions it can not have the spirit of liberty?"

Local government, as we have found, was known in the Philippines before the coming of the Spaniards. It continued with changes under the Spanish administration. The American government brought in their general system with the exception that instead of complete decentralization, in practice, municipalities and provinces are under central control. Civil Governor Taft wrote: "The municipal law is drawn on the same general plan as the municipal codes of this country, (the United States) and the government is practically autonomous. . . . The provincial government is partially autonomous." [608] Diverse civilizations have thus attended local assemblies in the Philippines, the one touching the other so as to make unbroken continuity. Public corporations now exist as municipalities or townships under the general law,

[608] William H. Taft, Civil Government of the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in "The Philippines," pp. 40, 41.

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as chartered cities for the city of Manila and the city of Baguio, and as provinces for the larger units.

The American and English law of corporations governs their functions. Among its elementary principles are these:

Public corporations are created for local political purposes connected with the public good, and as agencies of the State to assist in the civil government. The legislature has exclusive power to create, change, or destroy them at will. The consent of the people affected is not an essential requisite to their incorporation.[604] Form of organization, of which there are four distinct types, differs. The charter or law by which created becomes the local organic act. The municipal corporation can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient or indispensable.[605] Municipal powers are of two classes, governmental and corporate. In the Philippines they can, under their names, sue and be sued, contract and be contracted with, acquire and hold property for the general interest of the municipality or province, and exercise all the powers conferred in the organic act. Mr. Justice Johnson in United States *v.* Joson explains these fundamental rules in the following well-chosen language:

"Municipal charters are general or special laws of the state (or central government) granting to the people of certain well-defined sections of the state the right of local self-government. While the state grants to such locali-

[604] Berlin *v.* Gorham (1856) 34 N. H. 266.

[605] Spaulding *v.* Lowell (1839) 23 Pick. 71; U. S. *v.* Joson (1913) 26 Phil. 1, 9; I Dillon's Municipal Corporations, 5th Ed., sec. 237.

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ties the right of self-government in local affairs, it does not thereby deprive itself of the right also, when the occasion demands, to interfere and enforce its own laws. The state, in granting to the municipality the right of local self-government, does not thereby deprive itself of its general powers throughout the length and breadth of the state. The charter may be either modified, amended, or repealed whenever the state deems it necessary or advisable. The municipality is simply the agent of the State and is subject, at all times, to its control." [606]

Honest, efficient, and economical municipal government constitutes a vital problem for the people of the Islands. It touches the citizen in his daily life any number of times, while the Insular Government touches him once. Local administrations should, therefore, endeavor, in pursuance of their powers, to advance as rapidly as have villages and cities in progressive countries. Unhealthiness and unsightliness should be effaced; broader streets, kept clean and orderly, efficient drainage, adequate water supply, sanitation and lighting, sufficient fire and police protection, more commodious public buildings, attractive parks and places of outdoor recreation and play grounds for children, public baths, better educational advantages, and, indeed, all other improvements which tend to make the municipalities and the homes of its citizens more comfortable, attractive, and beautiful, should be demanded. Above all, the citizen should insist on a fixing of responsibility and a proper and constant attention by officials to their civic duties, so that the fine observation of Lord Bacon may apply: "The best governments are always subject to be like the fairest crystals wherein the icicle or grain is seen, which in a fouler stone is never perceived."

[606] 26 Phil. 1, 11 (1913).

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§ 145. Suffrage.[607]—No provision similar to the fifteenth amendment [608] to the United States Constitution was included in the Philippine Bill of Rights. The same causes as gave rise to the necessity of this article in the United States did not call for its extension to the Philippines. But suffrage was granted to the Filipino people by the Philippine Bill and subsequent Acts of Congress, and given application by Acts of the Philippine Commission and Legislature. The right to vote is a high prerogative of Philippine citizenship. It is more. The right to vote is a duty. Mr. Justice Story, one of the most eminent authorities on American jurisprudence, once said that the purpose of suffrage "is to keep up the continuity of government, and to preserve and perpetuate public order and the protection of individual rights. The purpose is therefore public and general, not private and individual. . . . Suffrage must come to the individual, not as a right, but as a regulation which the State establishes as a means to perpetuate its own existence, and to insure to the people the blessings it was intended to secure." And Baron Montesquieu, the great French publicist, once wrote: "Upon the manner of regulating the suffrage depends the salvation of States."

The English Ballot Act, commonly known as the Australian Ballot System, is here in force. The privacy of the ballot, which is its most salient characteristic, is a valuable safeguard of the independence of the voter

[607] See Villamor, *Tratado de Elecciones,* 2d Ed. and Kalaw, *Teorías Constitucionales,* Chs. VI, VII, VIII.

[608] The fifteenth amendment to the United States Constitution reads:

"§ 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

"§ 2. The Congress shall have power to enforce this article by appropriate legislation."

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against the influence of wealth and power.[609] The citizen must be allowed to vote for whom he pleases free from improper influences. In Gardiner *v.* Romulo, Mr. Justice Trent said:

"The purity of elections is one of the most important and fundamental requisites of popular government. To banish the spectre of revenge from the minds of the timid or defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure a fair and honest count of the ballots cast, is the aim of the law. To accomplish these ends, Act No. 1582 was enacted. This law requires that only qualified electors shall be admitted to the polls; that they shall vote in absolute secrecy, and that the returns shall be justly compiled and announced. In its essential details, this law is a counterpart of the ballot laws almost universally adopted within comparatively recent times in the United States, and is generally called by textwriters the Australian ballot law. . . . The central idea of the Australian ballot law, as so often expressed in the cases, is to shroud the marking of the ballots in absolute secrecy." [610]

The Philippine electoral system[611] is perhaps wisely ultra-conservative in nature. For example, woman suffrage has no champions, militant or otherwise, such as are found in other lands. Direct primaries are not advocated. None of the schemes devised to equalize the powers of the electorate have been adopted or even discussed. So we hear nothing at present of the "list system;" the "Hare system;" the "limited vote plan;" or the "cumulative vote plan." Nor are the Recall, the Initiative, or the

[609] People *v.* Pease (1863) 27 N. Y. 45, 81.

[610] 26 Phil. 521, 550, 562 (1914).

[611] See Villamor, *Tratado de Elecciones;* 2d Ed.; Teodoro and Diokno, The Election Law Compiled and Annotated; Adm. Code, Book 1, Title V, Ch. 20.

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Referendum in force.[611a] Some of these advanced ideas can be expected to be made into law once the framework of government is determined.

§ 146. **Education.**[612]—The conception that the State must make provision for education is as old as Western civilization. The Northwest Ordinance of 1787, antedating the American Constitution, thought public instruction important enough for special encouragement. President McKinley sent the principle to the Philippines with his Instructions when he said: "It will be the duty of the Commission to promote and extend and, as they find occasion, to improve the system of education already inaugurated by the military authorities. In doing this they should regard as of first importance the extension of a system of primary education which shall be free to all, and which shall tend to fit the people for the duties of citizenship and for the ordinary avocations of a civilized community. This instruction should be given, in the first instance, in every part of the Islands in the language of the people. In view of the great number of languages spoken by the different tribes, it is especially important to the prosperity of the Islands that a common medium of communication may be established, and it is obviously desirable that this medium should be the English language. Especial attention should be at once given to affording full opportunity to all the people of the Islands to acquire the use of the English language." The injunction of the martyred President has been consistently and energetically followed by the Philippine Government. Justification for spending so much proportionately on edu-

[611a] For general description of advanced electoral ideas see Holt, Introduction to the Study of Government, pp. 125-151; and Maynard *v.* Board of Canvassers (1890) 84 Mich. 228.

[612] See as one reference Cyclopedia of American Government, title "Education as a Function of Government," by Albert Bushnell Hart.

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cation, if indeed any were needed, is found in the active moral effect, in the refining influence of transferring from age to age the learning of mankind, in protection of the ignorant, in material and industrial development, and in training for good citizenship. The youth of the Philippines, whatever his station in life, and whatever his affluence or lack of affluence, not only has an inherent right to an education, but finds that right possible of fulfillment, because of the active support of the Government and of private institutions.

§ 147. Subject and title of bills.

Philippines.	*United States.*
"That no private or local bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." (Philippine Bill, sec. 5, par. 17.) "That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." (Philippine Autonomy Act, sec. 3, par. 17.)	(State Constitutions.)

Having considered the great powers of government and the great rights of the people, we come to further positive prohibitions.

The evils designed to be remedied by the quoted constitutional provisions are described by the Supreme Court of Michigan in the following language:

"The history and purpose of this constitutional provision are too well understood to require elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several

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measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the legislature should be fairly satisfied of its own design when required to pass upon it." [613]

The Philippine Bill, like some State Constitutions, limited the prohibition to private or local bills. So when the point was raised that section 3 of Act 1697 on the general subject of perjury was not expressed in the title of the Act, the Supreme Court was necessarily forced to hold that the contention could not be sustained, because the prohibition related only to private or local bills, and Act 1697 was not of this character.[614] Probably to cure this defect the Philippine Autonomy Act, by omitting the words "private or local," broadened the force of the

[613] People *v.* Mahaney (1865) 13 Mich. 481, 494, 495. See further Sun Mutual Insurance Co. *v.* City of New York (1853) 8 N. Y. 241, 251; State *v.* County Judge of Davis Co. (1856) 2 Iowa, 280; Walker *v.* Caldwell (1894) 4 La. Ann. 298; Cooley's Constitutional Limitations, 7th Ed., pp. 202-205; and Jones, Statute Law Making, pp. 44-48.

[614] U. S. *v.* Concepción (1909) 13 Phil. 424, followed and confirmed in U. S. *v.* Fonseca (1911) 20 Phil. 191.

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clause to be, like some State Constitutions, a general inhibition.

The provisions as now existing should therefore be treated as mandatory.[615] If the Legislature disregard it, the courts must enforce it, with the result that the whole Act may be declared void.[616] But great particularity in stating the object of the bill in the title is not required.[617] Legislation will not be embarrassed by strict construction. The constitutional provision "has no application to municipal ordinances, as these do not partake of the nature of laws, but are mere rules provided for the fulfillment of the laws." [618]

§ 148. The enacting clause.[619]

Philippines.	*United States.*
"All laws passed hereafter by the Philippine Commission shall have an enacting clause as follows: 'By authority of the United States, be it enacted by the Philippine Commission.'" (Philippine Bill, sec. 1, portion.)	(State Constitutions.)

[615] The viewpoint of most courts, Cooley's Constitutional Limitations, 7th Ed., pp. 213, 214. But not of California—Washington *v.* Page (1854) 4 Cal. 388 (later reversed by People *v.* Parks (1881) 58 Cal. 624—see *Ex parte* Liddell (1892) 93 Cal. 633), or of Ohio—Pim v. Nicholson (1856) 6 Ohio St. 176, where the section is regarded as merely directory. See Jones, Statute Law Making, Ch. IV.

[616] Cooley's Constitutional Limitations, 7th Ed., p. 211; Dobbins *v.* Northampton Tp. (1888) 50 N. J. Law, 496, 14 Atl. 587.

[617] People *v.* Mahaney (1865) 13 Mich. 481. "The words 'for other purposes' must be laid out of consideration. They express nothing, and amount to nothing as a compliance with this constitutional requirement. Nothing which the act could not embrace without them can be brought in by their aid." Town of Fishkill *v.* Fishkill & Beekman Plank Road Co. (1856) 22 Barb. 634.

[618] U. S. *v.* Espiritusanto (1912) 23 Phil. 610, 614.

[619] See Jones, Statute Law Making, Ch. VI.

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Joint Resolution No. 3 of the First Philippine Legislature (also the Administrative Code, sec. 6) provided that all laws thereafter enacted by the Legislature shall have the following enacting clause: *"By authority of the United States, be it enacted by the Philippine Legislature, that:"*

Courts differ as to whether constitutional provisions stipulating the form of the enacting clause are mandatory or directory.[620] The proper course is naturally for the Legislature to follow the prescribed form.

§ 149. Obligation of contracts.[621]

Philippines.	*United States.*
"That no law impairing the obligation of contracts shall be enacted." (Philippine Bill, sec. 5, par. 5. See also sec. 60.) "That no law impairing the obligation of contracts shall be enacted." (Philippine Autonomy Act, sec. 3, par. 5.)	"No State shall . . . pass any . . . law impairing the obligation of contracts." (United States Constitution, art. I, par. 1, portion.)

No one can think of this subject without remembering the historic Dartmouth College Case.[622] Argued by Webster, the most famous American lawyer and orator, and decided by Marshall, the most famous American jurist, its doctrines "have become so embedded in the jurisprudence of the United States as to make them to all intents and purposes a part of the United States Con-

[620] Compare Sjoberg *v.* Security Savings and Loan Association (1898) 73 Minn. 203 with McPherson *v.* Leonard (1868) 29 Md. 377. See Cushing, Parliamentary Law, sec. 2102.

[621] See generally Cooley's Constitutional Limitations, 7th Ed., pp. 383-417; Willoughby on the Constitution, Vol. II, Ch. 48; 6 R. C. L. pp. 323-369.

[622] Trustees of Dartmouth College *v.* Woodward (1819) 4 Wheat. 518, 4 L. Ed. 629.

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stitution itself." [623] The opinion in that case held that the constitutional provision applied not only to contracts between individuals and to grants of property made by the State to individuals or to corporations, but that the rights and franchises conferred upon private as distinguished from public corporations by the legislative acts under which their existence was authorized and the right to exercise the functions conferred upon them by the statute were, when accepted by the corporators, contracts which the State could not impair. [624] The opinion, it will therefore be noticed, confined the contracts which the Constitution protects to those respecting property rights.

Contracts when treated as property are also protected from direct impairment by the due process of law clause.[625]

As a leading example of the application of the principles growing out of the obligation of contracts provision of the Constitution, and which has local force, by repeated adjudications of the United States Supreme Court, it has been decided that the legislature may make a valid contract with a corporation in respect to taxation and that such contract can be enforced against the State at the instance of the corporation; so if the property of an individual or corporation is exempted from taxation, the State is bound thereby.[626] Our Supreme Court held section 134 of the Internal Revenue Law of 1904 (Act 1189)

[623] Waite, C. J. in Stone *v.* Mississippi (1880) 101 U. S. 814, 816, 25 L. Ed. 1079.

[624] Statement in Greenwood *v.* Freight Co. (1882) 105 U. S. 13, 26 L. Ed. 961.

[625] Sinking Fund Cases (1879) 99 U. S. 700, 25 L. Ed. 496 and other cases.

[626] McGee *v.* Mathis (1866) 4 Wall. 143, 18 L. Ed. 314; Home of the Friendless *v.* Rouse (1869) 8 Wall. 430, 438, 19 L. Ed. 495; The Asylum *v.* The City of New Orleans (1882) 105 U. S. 362, 26 L. Ed. 1128; Powers *v.* The Detroit, Grand Haven and Milwaukee Railway (1906) 201 U. S. 543, 50 L. Ed. 860, cited and quoted in Casanovas

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levying taxes on mining claims void, because it impaired the obligation of the contracts contained in the concessions of mines made by the Spanish Government.[627]

Among the many tributaries which flow into the main stream of the Dartmouth College Case mention can be made of these: The term "contract" has in this connection been exhaustively defined by Mr. Chief Justice Marshall, in a decision repeatedly followed, to mean a lawfully binding agreement in respect to property, either express or implied, executory or executed, between private parties or between a commonwealth and a private party or private parties; or a grant from one party to another; or a grant, charter, or franchise from a commonwealth to a private party or private parties.[628] Marriage is not here such a contract, the obligation of which is protected from impairment.[629] Neither are charters of municipal corporations included.[630] "The obligation of a contract," according to Mr. Chief Justice Marshall, "is the law which binds the parties to perform their agreement." [631] The obligation of a contract depends upon the law of the place of making.[632] Different tests to determine whether a contract has been "impaired" have been announced from time to time by the courts. One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. "It is not by the Constitution to be im-

v. Hord (1907) 8 Phil. 125. See also Cooley's Constitutional Limitations, 7th Ed., p. 395.

[627] Casanovas *v.* Hord (1907) 8 Phil. 125.

[628] Fletcher *v.* Peck (1810) 6 Cranch 87, 3 L. Ed. 162; Burgess, Political Science and Constitutional Law, Vol. I, p. 235.

[629] Maynard *v.* Hill (1888) 125 U. S. 190, 31 L. Ed. 654.

[630] Laramie Co. *v.* Albany Co. (1876) 92 U. S. 307, 23 L. Ed. 552.

[631] Sturges *v.* Crowninshield (1819) 4 Wheat. 122, 197, 4 L. Ed. 529; Ogden *v.* Saunders (1827) 12 Wheat. 213, 335, 6 L. Ed. 606; 6 R. C. L. p. 234.

[632] N. W. Ins. Co. *v.* McCue (1912) 223 U. S. 324, 56 L. Ed. 419; Selover *v.* Walsh (1912) 226 U. S. 112, 57 L. Ed. 146.

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paired at all. This is not a question of degree or cause, but of encroaching, in any respect, on its obligation—dispensing with any part of its force." [633] "The laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement. . . . The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. It is competent for the states to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired." [634] The person with whom the contract is made by the State may continue to enjoy its benefits unmolested as long as he chooses, but there his rights end, and he cannot, by any form of conveyance, transmit the contract or its benefits to a successor.[635] "But the state, by virtue of the same power which created the original contract of exemption, may either by the same law or by subsequent laws, authorize or direct the transfer of the exemption to a successor in title. In that case the exemption is taken, not by reason of the inherent right of

[633] Planters' Bank *v.* Sharp (1848) 6 How. 327, 12 L. Ed. 447. See generally 6 R. C. L. pp. 328, 329.

[634] Von Hoffman *v.* Quincy (1867) 4 Wall. 535, 18 L. Ed. 403, followed in Gaspar *v.* Molina (1905) 5 Phil. 197. See Sturges *v.* Crowninshield (1819) 4 Wheat. 122, 200, 4 L. Ed. 529.

[635] Morgan *v.* Louisiana (1876) 93 U. S. 217, 23 L. Ed. 860; Wilson *v.* Gaines (1881) 103 U. S. 417, 26 L. Ed. 401; Louisville & N. R. Co. *v.* Palmes (1883) 109 U. S. 244, 27 L. Ed. 922; Pickard *v.* East Tennessee, V. & G. R. Co. (1889) 130 U. S. 637, 32 L. Ed. 1051; St. Louis & S. F. R. Co. *v.* Gill (1895) 156 U. S. 649, 39 L. Ed. 567; Norfolk & W. R. Co. *v.* Pendleton (1895) 156 U. S. 657, 39 L. Ed. 574; Rochester Ry. Co. *v.* Rochester (1907) 205 U. S. 236, 51 L. Ed. 784.

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the original holder to assign it, but by the action of the State in authorizing or directing its transfer." [636]

A pertinent inquiry would be how to avoid some of the results accruing from the construction of this clause of the Constitution. Mr. Justice Story may have foreseen this probability, for in his concurring opinion in the Dartmouth College Case he suggested that when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract and could not, therefore, impair its obligation. This has since been a favorite method with legislative bodies by which to get around the Dartmouth College decision and to preserve intact the rights of the State. For example, the Philippine organic law (Philippine Bill, sec. 74, Philippine Autonomy Act, sec. 28) provides "that no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States." Consequently, under such a reservation, "whatever right, franchise, or power in the corporation depends for its existence upon the granting clauses of the charter, is lost by its repeal." [637] As further restrictions, besides that limiting to property rights, the prevailing opinion and one based upon sound reason, Judge Cooley says, is "that the State cannot barter away, or in any manner abridge or weaken, any of those essential powers which are inherent in all governments, and the existence of which in full vigor is important to the well-being of organized society; and that any contracts to that end are void upon general

[636] Rochester Ry. Co. *v.* Rochester (1907) 205 U. S. 236, 248, 51 L. Ed. 784.

[637] Greenwood *v.* Freight Co. (1882) 105 U. S. 13, 26 L. Ed. 961.

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principles."[638] For this reason, "the doctrine that a corporate charter is a contract which the Constitution of the United States protects against impairment by subsequent state legislation is ever limited in the area of its operation by the equally well-settled principle that a legislature can neither bargain away the police power nor in any wise withdraw from its successors the power to take appropriate measures to guard the safety, health, and morals of all who may be within their jurisdiction."[639] Again, "the state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of the peace."[640] But paramount to the contract is the right of eminent domain which does not impair the contract but appropriates it.[641]

With the proviso to the general constitutional provision prohibiting the passing of any law impairing the obligation of contract, limiting it to property, with the counter-prohibition safeguarding the essential attributes of

[638] Cooley's Constitutional Limitations, 7th Ed., p. 400.

[639] Boston Beer Co. *v.* Massachusetts (1878) 97 U. S. 25, 24 L. Ed. 989; Thorpe *v.* R. B. R. R. Co. (1854) 27 Vt. 140, 62 Am. Dec. 625; Northwestern Fertilizer Co. *v.* Hyde Park (1878) 97 U. S. 659, 24 L. Ed. 1036; Stone v. Mississippi (1880) 101 U. S. 814, 25 L. Ed. 1079; Douglas *v.* Kentucky (1897) 168 U. S. 488, 42 L. Ed. 553; Texas & N. O. R. Co. *v.* Miller (1911) 221 U. S. 408, 414, 55 L. Ed. 789.

[640] Illinois Central R. Co. *v.* Illinois (1892) 146 U. S. 387, 453, 36 L. Ed. 1018.

[641] Long Island Water Supply Co. *v.* Brooklyn (1897) 166 U. S. 685, 41 L. Ed. 1165.

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government, such as the police power and public property rights, and with the saving clause in charters, the teeth have been pretty well drawn from the Dartmouth College Case.

Our Legislature is bound by the prohibition. Our courts must enforce it. Accordingly, merely as a further example, a contract made between the Government of the Philippine Islands and an employee is not affected by any subsequent amendment of the law then in force.[642]

§ 150. Titles of nobility; presents, etc., from foreign states.[643]

Philippines.	*United States.*
"That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said Islands, shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State." (Philippine Bill, sec. 5, par. 9.)	"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state." (United States Constitution, art. I, sec. 9, last par.)
"That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said Islands, shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State." (Philippine Autonomy Act, sec. 3, par. 9.)	"No State shall . . . grant any title of nobility." (United States Constitution, art. I, sec. 10, par. 1, portion.)

[642] Insular Government *v.* Frank (1909) 13 Phil. 236.

[643] See the Federalist Nos. 43, 44; Story on the Constitution, 4th Ed., Ch. 41; Cooley's Principles of Constitutional Law, 3d Ed., p. 113.

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Such provisions are in line with the basic guaranty of the American Constitution of a republican form of government for every State of the Union (art. IV, sec. 4). The Philippine Bill of Rights, our Supreme Court has said, "approved of, and extended (to the Philippine Islands) the powers of a republican form of government modeled after that of the United States." [644] Consequently, the granting of titles of nobility would be incompatible with the institutions of the United States and the Philippines.

The prohibition against the acceptance of any present, emolument, office, or title from any foreign state is justified on the ground of a wise jealousy of alien influence in domestic affairs.

§ 151. Law of primogeniture.

Philippines.

"Nor shall the law of primogeniture ever be in force in the Philippines." (Philippine Autonomy Act, sec. 3, par. 8, last clause.)

The dictionaries define and describe primogeniture thus: "The superior or exclusive right possessed by the eldest son, and particularly, his right to succeed to the estate of his ancestor, in right of his seniority by birth, to the exclusion of younger sons." [645]

It is not clearly understood why the authors of the Philippine Autonomy Act thought it imperative to add this new prohibition to Philippine Organic Law. The law of primogeniture was a feudal notion of the Middle Ages, now modified in England, abolished in the United States, and without a trace in the Civil law of the Philippines. Descent is here clearly and justly regulated under the well-known Civil law rules. So far as known, no one has

[644] Roa *v.* Collector of Customs (1912) 23 Phil. 315, 340.

[645] Black's Law Dictionary, 2d Ed. See also 3 Washburn on Real Property, 6th Ed., pp. 4 *et seq.*

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ever even advocated a law of primogeniture for the Islands.

§ 152. Polygamy.

Philippines.

"Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages." (Philippine Autonomy Act, sec. 3, par. 14, last two sentences.)

United States.

"Every person who has a husband or wife living, who marries another, whether married or single, and any man who simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be fined not more than five hundred dollars and imprisoned not more than five years. But this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract." (U. S. Revised Statutes, sec. 5352, as amended; U. S. Criminal Code, sec. 213; U. S. Compiled Statutes, 1913, sec. 10486.)

Polygamy is considered "contrary to the spirit of Christianity and to the civilization which Christianity has produced in the Western World." [646] In another case, the Supreme Court of the United States said: "Bigamy and polygamy are crimes by the laws of all civilized and

[646] Mormon Church *v.* U. S. (1890) 136 U. S. 1, 49, 34 L. Ed. 478.

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Christian countries. . . . They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman and to debase man. Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment."[647] The constitutional guaranty of religious freedom does not preclude laws in respect to plural marriages; and such Congressional legislation may possibly provide a rule of action for all those residing "in places over which the United States has exclusive control"—the Philippines.[648] Anyhow, illegal marriages are here punished by Insular law.[649]

§ 153. Appropriations.

Philippines.	*United States.*
"That no money shall be paid out of the Treasury except in pursuance of an appropriation by law." (Philippine Bill, sec. 5, par. 15.)	"No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." (United States Constitution, art. I, sec. 9, par. 7.)
"That no money shall be paid out of the Treasury except in pursuance of an appropriation	

[647] Davis *v.* Beason (1889) 133 U. S. 333, 341, 33 L. Ed. 637. "Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony—the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." Murphy *v.* Ramsey (1885) 114 U. S. 15, 45, 29 L. Ed. 47. A description of legislation against polygamy is given in Reynolds *v.* U. S. (1878) 98 U. S. 145, 25 L. Ed. 244.

[648] Reynolds *v.* U. S. *id.*

[649] Arts. 440, 471-480, Penal Code; G. O. No. 68, The Marriage Law, sec. 3.

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by law." (Philippine Autonomy Act, sec. 3, par. 15.)

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the Treasury and paid out for such purpose only." (Philippine Bill, sec. 5, par. 19.)

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only." (Philippine Autonomy Act, sec. 3, par. 19.)

These restrictions are aimed at executive officials, particularly those connected with the Treasury. The purpose is to reserve the right to make appropriations to the Legislature, leaving no discretion to the Treasurer.[650] An appropriation here means a legislative authorization that money may be paid out at the Treasury.[651] Without such authorization, even if a claim be supported by the judgment of a court, no money can be paid by the Treasury.[652] If by an oversight, a valid public obligation is not provided for, a deficiency appropriation is necessary before payment can be made. The Attorney-General of the Philippines and the Insular Auditor have held these provisions binding in a number of opinions and rulings.[653] The annual Appropriation Acts also provide, in substance,

[650] U. S. *v.* Price (1885) 116 U. S. 43, 29 L. Ed. 541; Hoey *v.* Baldwin (1902) 1 Phil. 551.

[651] Compagna *v.* U. S. (1891) 26 Ct. Cl. 317.

[652] Reeside *v.* Walker (1850) 11 How. 271, 13 L. Ed. 693.

[653] See Op. Atty. Gen. P. I., April 11, 1913, citing American decisions; but see Acts 1902 and 1989 (sec. 4) of the Philippine Legislature, which came dangerously near to violating the provision, to say the least.

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that all sums appropriated shall be expended solely for the specific purposes for which appropriated and for no others.[654]

The United States Constitution and many other constitutions contain an additional provision, not here in force, to the effect that all bills for raising revenue shall originate in the House of Representatives. (Art. I, sec. 7, par. 1.) The advantage resulting therefrom is believed to be because the people have a more direct influence upon the popular branch of the Legislature. Although not written into the Philippine organic law, the insistence of the Philippine Assembly has finally caused the upper chamber to recognize this privilege as in the Assembly.[655]

There is also a provision peculiar to Porto Rico and the Philippines, providing that: "If at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purpose aforesaid." [656] The United States Federal Court for Porto Rico has held that this does not mean that every specific appropriation

[654] See for example, Act 2540, sec. 5; and as permanent legislation, Adm. Code, sec. 630.

[655] See Singson, The Filipino Legislator; His Difficulties and Successes, I Philippine Law Journal, August, 1914, pp. 12, 16.

[656] Philippine Bill, sec. 7, as amended by Act of Congress, Feb. 27, 1909, last proviso; Philippine Autonomy Act, sec. 19, portion; Olmstead Law for Porto Rico of July 15, 1909, 31 Stat. at L. 83, Ch. 191. The Japanese Constitution, Art. 71, contains a provision for a similar device.

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of the previous appropriation bills is specifically re-enacted to be specifically devoted to the purposes specifically set forth in such appropriation bills, but that it means that an amount equal to the total of the sums appropriated in such previous appropriation bills is deemed to be appropriated for the support of the government for the current fiscal year, with power in the Governor to allot the same to the support of the government as its necessities may require according to existing law.[657] The Government of the Philippine Islands has on occasion followed the principles enunciated in the Porto Rican decision.

§ 154. Indebtedness.

Philippines.

"That for the purpose of providing funds to construct necessary sewer and drainage facilities, to secure a sufficient supply of water and necessary buildings for primary public schools in municipalities, the Government of the Philippine Islands may, where current taxation is inadequate for the purpose, under such limitations, terms, and conditions as it may prescribe, authorize, by appropriate legislation, to be approved by the President of the United States, any municipality of said Islands to incur indebtedness, borrow money, and to issue and sell (at not less than par value in gold coin of the United States) registered coupon bonds, in such amount and payable at such time as may be determined to be necessary by the Government of said Islands, with interest thereon not to exceed five per centum per annum: *Provided,* That the entire indebtedness of any municipality shall not exceed five per centum of the assessed valuation of the real estate in said municipality, and any obligation in excess of such limit shall be null and void." (Philippine Bill, sec. 66.)

"That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine Government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues,

[657] Navarro *v.* Post (1909), 5 Porto Rico Fed. 61.

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bonds and other obligations may be issued by the Philippine Government or any provincial or municipal government therein, as may be provided by law and to protect the public credit: *Provided, however,* That the entire indebtedness of the Philippine Government created by the authority conferred herein shall not exceed at any one time the sum of $15,000,000, exclusive of those obligations known as friar land bonds, nor that of any province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time." (Philippine Autonomy Act, sec. 11.)

A number of opinions of the Attorney-General and rulings of the Insular Auditor have dealt exhaustively with the power of municipalities (and by parity of reasoning of provinces included in the Philippine Autonomy Act) to borrow money.[658] The derivatory conclusions are these: In the absence of some special authority, a public corporation has no power to borrow money; the special authority of the Organic Law for the Philippines is negative and prohibitory in effect; the prohibition that the entire indebtedness of a municipality can not exceed five per centum (now seven per centum) of the assessed valuation of the real estate in said municipality (now changed to the aggregate tax valuation of this property) is absolute, and any obligation in excess of such limit is null and void; the rule applies to loans from the central government as well as from private individuals. "Such limitations have been found by experience to be necessary to prevent extravagance, are remedial in their nature, are based upon a wise policy, and ought, therefore, to be construed and applied to secure the end sought." [659]

[658] See Ops. Atty. Gen. P. I., Oct. 21, 1912, Nov. 19, 1912, Dec. 3, 1912, and Dec. 23, 1912; Ruling Insular Auditor, Nov. 19, 1912, etc.
[659] 1 Dillon's Municipal Corporations, 5th Ed., p. 546.

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REPRESENTATIVE AUTHORITIES.

Thomas M. Cooley, Constitutional Limitations, 7th Ed. (1903).

Thomas M. Cooley, Constitutional Law, 3d Ed. (1898).

Weston Woodbury Willoughby, The Constitutional Law of the United States (1910).

John W. Burgess, Political Science and Constitutional Law (1913).

James Parker Hall, Cases on Constitutional Law (1913).

Pedro A. Paterno, *Gobierno Civil de las Islas Filipinas* (1910) Part III.

Teodoro M. Kalaw, *Teorias Constitucionales* (1912).

Ignacio Villamor, *Tratado de Eleciones*, 2d Ed. (1912).

8 Cyc., pp. 695 *et seq.*, article by George F. Tucker.

6 R. C. L. (1915) pp. 1-485.

Leading cases too numerous to mention.

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CHAPTER 10.

PHILIPPINE LAW.

§ 155. Law as here used.
156. Sources and development.

Written—Spanish.

157. Force of laws of former sovereignty.
158. Application of rules.

Written—American—Filipino.

159. General orders of the Military Governors.
160. Acts of the Philippine Commission.
161. Acts of the Philippine Legislature.
162. Codification.
163. Joint and concurrent resolutions.
164. Executive orders, proclamations, rules, regulations, and circulars.
165. Rules of court.
166. The administrative code of the department of Mindanao and Sulu.
167. Provincial resolutions.
168. Municipal ordinances and resolutions.

So-called unwritten.

169. English and American common law.
170. Spanish common law.
171. Customary law.
172. Mohammedan law.
173. Case law.
174. Legal treatises.
175. Philippine common law.

Construction.

176. Established canons.

A suggestion.

177. Annotate.

§ 155. Law as here used.—A title to this chapter technically correct, to which all would agree, is im-

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possible. "Jurisprudence" [1] is discarded, because, besides being unsettled in meaning, it implies to many in the Philippines, and elsewhere, merely case-law. "Law," while preferable, is a word of diversified signification, to be found in many senses. The conception of the nature of law differs according to the views of the respective schools.

Law [2] as here used does not include organic law—the fundamental law, taking the place of a constitution, described in the two preceding chapters, and usually studied in a course on constitutional law. Law as here used

[1] "The Germans classify Science of Law (*Rechtswissenschaft*) into Jurisprudence, on one side, and Philosophy of Law, on the other. In this scheme, Jurisprudence embraces the concrete elements of law, while Philosophy of Law deals with its abstract and fundamental side. It is accordingly possible for German writers to consider Jurisprudence not strictly as a science of universal principles, but as something limited by time or place. They may therefore speak freely of a Jurisprudence of modern times, or the Jurisprudence of a particular state. (See Sternberg, *Allgemeine Rechtslehre,* Part First, pp. 123, 153; also, the diagram definitions of Friedrich (*Die Bestrafung der Motive und die Motive der Bestrafung*, 1910) in *Archiv für Rechts und Wirtschaftsphilosophic,* Bd. III, 2, 201.) This is the usage of the European continent, and especially of France, where Jurisprudence is practically synonymous with case-law. It has also found a wide reception in our language." Gareis, Science of Law, p. 22, note.

"The term Jurisprudence is wrongly applied to actual systems of law, or to current views of law, or to suggestions for its amendment, but is the name of a science. This science is a formal, or analytical, rather than a material one. It is the science of actual, or positive, law. It is wrongly divided into 'general' and 'particular,' or into 'philosophical' and 'historical.' It may therefore be defined provisionally as 'the formal science of positive law.'" Holland, The Elements of Jurisprudence, 11th Ed. pp. 12, 13.

"Jurisprudencia Filipina" is the title of the Spanish edition of the Philippine Reports.

[2] See Holland's Jurisprudence, 11th Ed.; W. S. Pattee, The Essential Nature of Law; Wilson, The State, Ch. XIV; Karl Gareis, Science of Law; 25 Cyc. 163; Black's Law Dictionary; Wood's

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includes the whole system of rules of human conduct, subordinate to the organic law, of which the courts take cognizance. It covers both substantive and adjective law, both written and unwritten law, the subjects of all systems included in the usual classifications. Comprised within the term are codes, statutes, legislative resolutions, executive orders, court rules, ordinances, cases, customs, and treatises.

§ 156. Sources and development.—At least four of the great legal systems of the world, Canon, Mohammedan, Civil (Spanish), and Common (Anglo-American) have affected, and still do affect, Philippine Law. Add to these the native Malay customary law and the independent military law, and the far removed currents which have carried legal knowledge to the Islands are discovered. The Canon law, due to separation of church and state, is now looked to only in exceptional cases. The Mohammedan law following Islam into the southern islands of the Philippines only concerns those of that faith. Customary law is more accepted practise outside the usual cognizance of the judiciary. And military law both under Spain and the United States was restricted to those of that branch. But the two other great streams of the law, the Civil, the legacy of Rome to Spain coming from

Appeal (1874), 75 Pa. 59. There is no word in the language which in its popular and technical application takes a wider or more diversified signification than the word "law." Miller *v.* Dunn (1887) 72 Cal. 462, 466. The Imperative School regards law as something commanded by the state (type: Austin). The Historical School contends that law is an unconscious development, like a language (type: Savigny). The Sociological School asserts that law is a complex of social evolution and social elements (type: Post). The Dogmatic School assumes that law proceeds from a higher authority than the state (type: Augustine). The Rational School finds the basis of law in reason (type: Cicero). The Metaphysical School discovers the immutable foundations of law in transcendental reality (type: Kant). Gareis, p. 12, note.

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the West, and the Common, the inheritance of the United States from Great Britain coming from the East, have here in the Philippines met and blended.[3]

All these various sources of our law do but reflect Philippine history—Custom—the inherent vitality of native institutions; Canon and Mohammedan—the force of religious propaganda; Military—the militant glory of the races; Civil—the milestones of Spanish power; and Common—the democratic progress of the United States.

The American constructive policy was determined by President McKinley when he recognized the force of the Spanish municipal law and when in his instructions to the Commission he stated that "The main body of laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. Changes made should be mainly in procedure, and in the criminal laws to secure speedy and impartial trials and, at the same time, effective administration, and respect for individual rights." That these instructions have been followed is shown by the words of the United States Supreme Court in an opinion by Mr. Justice Day: "Cases which have come to this court from the Philippines and Porto Rico, where we have had occasion to consider the enactments making changes in the laws of those Islands, show the disposition of the Executive and Congress not to interfere more than is necessary with local institutions, and to engraft upon the old and different system of jurisprudence established by the civil law only such changes as were deemed necessary in the interest of the people, and in order to more effectually conserve and protect their rights."[4] Generally, the foundation of the substantive law is the civil law, with the adjective law the replica of Anglo-American statutes.

[3] See R. W. Lee, The Civil Law and the Common Law—A World Survey, XIV Michigan Law Review, Dec., 1915, p. 89.

[4] Pérez *v.* Fernández (1906) 202 U. S. 80, 91, 50 L. Ed. 942.

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How strategic a position this is for the Philippines! The concise, scientific precision and perfection of civil codification strengthened in its weakest parts by modern progressive procedural acts. Judge Abreu of the Court of First Instance has successfully established from legal history and juridical philosophy that this intermingling of legal systems is to the advantage of the peoples affected.[5] Rome and England, not to mention Quebec, Louisiana, and the Pacific States, all justify the admirable results of this policy. "In each of these instances," states Judge Abreu, "the secret of success has invariably rested upon two facts: (a) that laws closely interlaced with religion, sentimental feelings, or family relations, were not superseded, and in case they were it was in a slow and gradual manner; (b) that laws concerning relations not regulated before, or granting rights never enjoyed before, had been freely and promptly imposed. These two facts exactly repeat themselves, so far as I can observe, in the Americanization of the Philippine laws." Again he says, "In the necessary blending of the laws of the Filipinos with the laws of the Americans, it has happened; First, That when a law of their own was effaced by further legislation, the American law was better; Second, That when the Filipinos had one too imperfect to suit present conditions, the law of the Americans was a necessity." Our present endeavor should be to mould and develop a strictly Philippine legal system.

With these sources and this outline of development before us, we can classify Philippine law for our pur-

[5] José C. Abreu, The Blending of the Anglo-American Law with the Spanish Civil Law in the Philippines, III Philippine Law Review, May, 1914, p. 285. Also Charles S. Lobingier, Blending Legal Systems in the Philippines, XXXII Review of Reviews, Sept., 1905, p. 336, and XXI Law Quarterly Review, Oct., 1905, p. 401; and Jorge Bocobo, Civil Law under the American Flag, I Philippine Law Journal, January, 1915, p. 284.

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poses into (1) Written, resolving into (a) Spanish and (b) American elements, and (2) So-Called Unwritten, including the common law, case law, and customary law. We can omit a description of Canon law [6] and Military law as bound up with the establishments of which a part, but add a compendium regarding the construction of statutes.

Written—Spanish.

§ 157. Force of laws of former sovereignty.—History reveals many instances in which conquerors have permitted the laws of the new territory to remain undisturbed. Lord Bryce says the reason is that "Law is a tenacious plant, even harder to extirpate than language; and new rulers have generally had the sense to perceive that they had less to gain by substituting their own law for that which they found than they had to lose by irritating their new subjects." [7] The French law left in Quebec and the Spanish-French law continued in Louisiana are modern examples of the wisdom of this course.[8]

Numerous cases,[9] including ones of Philippine origin,

[6] See Ecclesiastical Administration, sec. 43, *supra*.

[7] Selected Essays in Anglo-American Legal History, Vol. I, p. 593. See Reinsch, Colonial Government, Ch. XVIII.

[8] See Exchange Bank *v.* The Queen (1886) 11 App. Cas. 157; Wagner *v.* Kenner (1842) 2 Rob. (La.) 120; C. F. Randolph, Law and Policy of Annexation, p. 136; Laurel, What Lessons may be Derived by the Philippine Islands from the Legal History of Louisiana, II Philippine Law Journal, Sept., 1915, p. 91.

[9] Sir William Scott in The Fauna (1804) 5 Robinson, 106; Marshall, C. J., in American Insurance Co. *v.* Canter (1828) 1 Pet. 511, 7 L. Ed. 242; Daniel, J., in Leitensdorfer *v.* Webb (1858) 20 How. 176, 15 L. Ed. 891; Fuller, C. J., in Ortega *v.* Lara (1906) 202 U. S. 339, 50 L. Ed. 1055, concerning an article of the Spanish Civil Code in effect in Porto Rico; Harlan, J., in Alvarez *v.* U. S. (1910) 216 U. S. 167, 54 L. Ed. 432, office purchased in Porto Rico not protected; Lurton, J., in Vilas *v.* Manila (1911) 220 U. S. 345, 55 L. Ed. 491, concerning the status of Manila; Philippine

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have settled the rules of the public law recognized by the United States which govern the effect of a change of sovereignty by conquest or cession upon the laws of the acquired territory. The primary distinction is between municipal and political law. "Municipal" is here used in its more extensive meaning in contra-distinction to international, as that law which regulates the intercourse and general conduct of individuals—laws intended for the protection of private rights.[10] "Political" is used to denominate the laws regulating the relations sustained by the inhabitants to the sovereign.[11]

The great body of the municipal laws of the acquired province or country remain in force until abrogated or changed by the government of the United States. For example, the inhabitants' rights of property are undisturbed.[12] Such municipal law of the former sovereignty as is inconsistent with the Constitution and laws of the United States or the characteristics and institutions of government is at once displaced.

The previous political relations of the inhabitants of the ceded region are totally abrogated. The political law pertaining to the prerogatives of the former government necessarily ceases. "It cannot be admitted that the King

Sugar Estates Development Co. *v.* U. S. (1904) 39 Ct. Cl. 225; Trent, J., in Roa *v.* Collector of Customs (1912) 23 Phil. 315, 330. See also Lord Mansfield in Campbell *v.* Hall, Cowp. 204; the late Mr. Justice Brewer in his article on "International Law," 22 Cyc. 1729; I Moore, International Law Digest, pp. 304 *et seq.;* 5 Op. Atty. Gen. P. I. 510, 542.

[10] Marshall, C. J., in American Insurance Co. *v.* Canter (1828) 1 Pet. 511, 7 L. Ed. 242; Field, J., in Chicago, Rock Island and Pacific Railway Co. *v.* McGlinn (1885) 114 U. S. 542, 546, 29 L. Ed. 270; Bean, J., in Cook *v.* Port of Portland (1891) 13 L. R. A. 533.

[11] American Insurance Co. *v.* Canter (1828) 1 Pet. 511, 7 L. Ed. 242; Roa *v.* Collector of Customs (1912) 23 Phil. 315.

[12] Marshall, C. J., in U. S. *v.* Percheman (1833) 7 Pet. 51, 8 L. Ed. 604; Strother *v.* Lucas (1838) 12 Pet. 410, 9 L. Ed. 1137.

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of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of its own government and not according to those of the government ceding it." [13] Such political laws of the prior sovereign as are not in conflict with the Constitution or institutions of the United States continue in force only if the new sovereignty shall affirmatively so declare.[14]

The best presentation of the applicable rules is by Mr. Justice Field, in amplification of the previous statements of Sir William Scott and Mr. Chief Justice Marshall, as follows:

"It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession public property passed from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions and constitution of the new government, are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support

[13] Pollard's Lessee *v.* Hagan (1845) 3 How. 212, 225, 11 L. Ed. 565. *E. g.* state religion, U. S. *v.* Balcorta (1913) 25 Phil. 273.

[14] Ely's Administrator *v.* U. S. (1898) 171 U. S. 220, 43 L. Ed. 142; Roa *v.* Collector of Customs (1912) 23 Phil. 315, 330.

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of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general that a change of government leaves them in force until by direct action of the new government they are altered or repealed." [15]

As a corollary to these principles, the fact that the transfer of territory from one nation to another brings in a new system of law makes no difference. So the civil law in all its mutations will be protected by the United States, a common law country. "In the future growth of the nation," the United States Supreme Court once said, "as heretofore, it is not impossible that Congress shall see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws, and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy." [16]

[15] Chicago, Rock Island and Pacific Railway Co. *v.* McGlinn (1885) 114 U. S. 542, 546, 29 L. Ed. 270.

[16] Holden *v.* Hardy (1898) 169 U. S. 366, 389, 42 L. Ed. 780; Hubgh *v.* New Orleans Railway Co. (1851) 6 La. Ann. 495, 54 Am. Dec. 565; Chew *v.* Calvert (1818) Walker's Reports, Miss. 54; and any number of cases in which the civil law has been upheld.

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The general rules heretofore described as to the continuation of laws of the acquired territory were followed for the Philippines by President McKinley in his instructions to General Merritt dated May 19, 1898, namely: "Though the powers of the military occupant are absolute and supreme, and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property, and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent; and in practice they are not usually abrogated, but are allowed to remain in force, and to be administered by the ordinary tribunals, substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion." [17]

The proclamation of General Merritt on August 14, 1898, on the capitulation of the Spanish forces was of similar tenor.[18]

§ 158. Application of rules.[19]—In the application of the rules relative to the continuation of Spanish laws in the Philippines, the courts, as said by Mr. Justice Moreland, have taken this reasonable view: "The great

[17] Off. Gaz. Jan. 1, 1903, p. 1.

[18] "The government established among you by the United States Army is a government of military occupation; and for the present it is ordered that the municipal laws, such as affect private rights of persons and property, regulate local institutions and provide for the punishment of crime, shall be considered as continuing in force, so far as compatible with the purposes of military government, and that they be administered through the ordinary tribunals substantially as before occupation; but by officials appointed by the government of occupation."

[19] See generally Charles S. Lobingier, The Spanish Law in the Philippines, 1 Philippine Law Review, March 15, 1912, p. 597, and Annual Bulletin No. 4, Comparative Law Bureau, July 1, 1914.

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body of our laws is of Spanish origin and comes to us and is enforced by us upon the theory that it has survived." [20] The basic Spanish laws, the Civil Code, the Code of Commerce, the Penal Code, and the Mortgage Law are consequently construed as Codes, as a matter of course. Only when the applicability of a particular article of one of these laws is in issue will the courts feel themselves bound to decide its validity.

A series of cases and opinions have resolved the further question of what other Spanish laws remained in force after American occupation.

The Supreme Court of the Philippines, affirmed on appeal to the United States Supreme Court, held that the Law of Waters in force in these Islands is the law of August 3, 1866, and not the law of 1879 of the Peninsula.[21] The provisions of the *Ley Provisional* were said to be in force in so far as they have not been repealed or amended by implication by the body of laws enacted in these Islands since the change from Spanish to American sovereignty.[22] The Attorney-General found the penal provisions of the Spanish Railway Law of 1875 and 1877 as still effective; the Supreme Court also applied this portion of the law.[23] The Attorney-General about the same time carried his ruling further in an opinion to the effect that the Spanish Railway Law of November 23, 1877, and the regulations for its execution of September 8, 1878, except as inconsistent with subsequent legislation embodied in Philippine statute law, or as repugnant to

[20] Concurring opinion in Forbes *v.* Chuoco Tiaco (1910) 16 Phil. 534, 592.

[21] Ker & Co. *v.* Cauden (1906) 6 Phil. 732, 223 U. S. 268, 56 L. Ed. 432 (1912); also Montaño *v.* Insular Government (1909) 12 Phil. 572. Described by Carlos Tan, Water Rights in the Philippines, II Philippine Law Journal, Oct., Nov., 1915.

[22] U. S. *v.* Fortaleza (1909) 12 Phil. 472, 477.

[23] 3 Op. Atty. Gen. P. I., 395; 5 Op. Atty. Gen. P. I., 201; U. S. *v.* Calaguas (1909) 14 Phil. 739.

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American institutions or the change from Spanish to American sovereignty, are in full force and effect in the Philippine Islands.[24] Articles 44 to 78 of the Law of Marriage of 1870 were extended to the Philippines and with the portions of *Las Siete Partidas* concerning divorce continued in force.[25]

Whether the Spanish Copyright Law of January 10, 1879, had force after the change from Spanish to American sovereignty has never been definitely settled, although the weight of authority is in favor of the view that it was abrogated. This is the conclusion reached by two Attorneys-General, a Judge of the Court of First Instance of the city of Manila, a Justice of the Supreme Court, a well-known text writer, and a member of the Manila bar in a monograph on the subject.[26] Although the question was brought before the courts, on appeal, the Supreme Court permitted the case to go off on a question of jurisdiction.[27] The same doubt exists as to the Spanish Mining Law. Mr. Justice Willard expressed the opinion that it was not in force.[28]

On the other side, the Supreme Court found the Spanish Military Code no longer operative, presumably because

[24] Op. Atty. Gen. P. I., Aug. 30, 1909.

[25] De la Rama *v.* De la Rama (1903) 3 Phil. 34; Ebreo *v.* Sichon (1905) 4 Phil. 705; Ibañez *v.* Ortiz (1905) 5 Phil. 325; Del Prado *v.* De la Fuente (1914) 28 Phil. 23.

[26] Attorney-General Araneta, 3 Op. Atty. Gen. 453; Acting Attorney-General Harvey, 4 Op. Atty. Gen. 8; Judge Crossfield, U. S. *v.* Yam Tung Way, Court of First Instance, Manila, May, 1910; Willard's Notes to the Spanish Civil Code, pp. 39, 40; William Benjamin Hale, Copyright in Porto Rico and the Philippines, II Philippine Law Journal, January, 1916, p. 268; Charles C. De Selms, Unpublished Thesis. Likewise Attorney-General of Porto Rico as to letters patent. Vol. I Ops. 74, 181. But Attorney-General Villamor argued before the courts that the law was in force.

[27] U. S. *v.* Yam Tung Way (1911) 21 Phil. 67.

[28] Notes to the Spanish Civil Code, p. 40.

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a political law.[29] It decided the Spanish Notarial Act not to be in existence.[30] And it held in another case articles 17 to 27, inclusive, of the Civil Code, dealing with Spanish citizenship, to be political laws and so abrogated.[31]

Generally, therefore, the following are the Spanish laws which continued in practical operation after American occupation: Civil Code, Code of Commerce, Penal Code, Mortgage Law, *Ley Provisional,* Marriage Law of 1870, Law of Waters of 1866, and the Railway Law of 1877. Every one was extensively modified by subsequent legislation. By persistent amendment the Code of Commerce, the Mortgage Law, and the Law of Waters became but skeleton Codes,[32] and other laws as the *Ley Provisional* and the Railway Law were rarely used. By enactment of Act 190, the Spanish Code of Civil Procedure was nullified.[33]

Written—American—Filipino.

§ 159. General orders of the Military Governors.— Two General Orders of the Military Governors promulgated to cover omissions of the Spanish legal system were permanent contributions to the legislation of the Philippines. "The powers of a Military Governor to issue orders, decrees, regulations, etc., which have the force of law in the territory over which he has jurisdiction is beyond question." [34]

General Orders No. 58 of April 23, 1900, according to its preamble was issued "in the interest of justice, and to safeguard the civil liberties of the inhabitants of these

[29] U. S. *v.* Sweet (1901) 1 Phil. 18.
[30] Bagsa *v.* Nagramada (1908) 11 Phil. 174.
[31] Roa *v.* Collector of Customs (1912) 23 Phil. 315.
[32] See Espiritu, Notes on the Code of Commerce; Tan, Philippine Water Rights, II Philippine Law Journal, Nov., 1915, p. 192.
[33] Legaspi *v.* Aguilar (1908) 12 Phil. 353.
[34] Duarte *v.* Dade (1915) XIII O. G. 2006, 2009.

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Islands." The one hundred and ten brief sections constitute a complete Code of Criminal Procedure. This Code secures to the accused all the rights to which he is usually entitled in the United States except trial by jury. It introduced the writ of habeas corpus. Mr. Chief Justice Arellano has said of General Orders No. 58:

"This law, based upon the accusatory system, has abolished the inquisitorial period so derogatory of the rights of the accused, and which was the foundation of our former criminal procedure; the time formerly taken up by this inquisitorial system without the right of intervention on the part of the accused, which at times would be prolonged for years, dependent upon the difficulty of investigation, has been saved; the long period of preventive punishment suffered by many persons during the long summary examination is now avoided, which said examination was carried on for the purpose of investigating the commission of a crime and whether any person was guilty thereof; the new procedure provides for complete equality between the accuser and the accused, between prosecution carried on by the government and the defense of his personal liberty and security interposed by the defendant; a brief proceeding, which becomes and is public from its initiation, fully provides all that is necessary for a complete defense, and is an absolute safeguard of personal security; this undoubtedly, is the greatest benefit conferred upon the inhabitants of this country." [35]

The Code of Criminal Procedure alluded to by the Supreme Court as "the notably short, compact and con-

[35] Report, Military Governor, 1900, App. AA, GG; Le Roy, The Americans in the Philippines, Vol. II, pp. 279, 280 (Note). General Crowder who helped draft the law summarizes the changes as follows: "(1) The requirement of a specific complaint or information, charging but one offense; (2) preliminary examination with witnesses, with immediate decision as to holding the prisoner, abolishing the interminable and secret *sumario;* (3) the right of

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cise military order" [36] has met the test of experience well. The Legislature has had to amend or supplement it in but minor particulars. Prosecuting officials and members of the bar have found it all sufficient in practice. Former Secretary of Finance and Justice Araneta says that "this reform has met with general approval and applause, and is looked upon as one of the most positive benefits obtained from the government established in these Islands." [37]

General Orders No. 68 of December 18, 1899, as amended by General Orders No. 70, series of 1900, is the other law issued by the Military Governor which should not be left unmentioned.[38] Liberty of marriage was there recognized. Civil marriage was regulated.

§ 160. Acts of the Philippine Commission.—For practically seven years—from September 1, 1900, to

being confronted by the witnesses, of cross-examination, of compulsory attendance of witnesses for defense, of exemption from testimony against one's self—all the methods of the open trial, in place of the secret or semi-secret procedure of the Civil-Law countries, and the right also of appeal in all cases; (4) the privilege of demurring to an insufficient complaint and of pleading a former judgment or jeopardy; (5) the right of the joint defendants to be tried separately; (6) the right of new trials in case of errors of law or newly discovered evidence; (7) the extension of such procedure, in a simple form, to justices' courts; (8) the making of all persons, including defendants, competent witnesses, instead of excluding the accused and his relatives and employees; (9) the evidence to be relevant and the best of which the case might be susceptible, doing away with the former free admission of hearsay evidence; (10) introducing the specific remedy of the habeas corpus writ, instead of the theoretical assurance in the Spanish law of a 'speedy trial;' (11) safeguarding the issuance and execution of search-warrants." Le Roy, *Id.*

[36] U. S. *v.* De Guzman (1915) XIII O. G. 1173, 1174.

[37] Organization of Police and Judiciary, Cablenews-American Yearly Review Number, 1911, p. 32.

[38] See Ramos, Marriage: Forms, Celebration, and Legal Consequences, p. 92.

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October 16, 1907—the Philippine Commission was the sole legislative body of the Islands. As during this period there was an American majority on the Commission, and as these Commissioners were simultaneously heads of Executive Departments, the laws enacted were consequently those which according to American minds were thought wise for the proper government of the Islands, and which usually were found necessary by reason of administrative experience. Naturally, therefore, American precedents were mainly taken and adapted to Insular conditions.

Exactly 1800 Acts were enacted by the Commission. About 100 of these were pushed through in the last month and a half preceding the inauguration of the Philippine Assembly. Some Acts of the Philippine Commission we noticed in describing the early work of the Second Philippine Commission.[39] Others we take up under special topics. Many were private, special, temporary, or local in nature. Dr. Barrows critically observes that "the bulk of the acts . . . passed by the Commission during the period of its sole legislative authority, from 1900 to 1907, are not laws or *lois* in the French sense, but minor amplifications, suspensions, or administrative adjustments properly forming the field of executive ordinances or decrees."[39a] All that were thought to constitute general and permanent legislation were printed in the "Compilation of the Acts of the Philippine Commission." Here can be found laws of great importance which it would be wearisome to describe, but certain of which can at least be mentioned.

A subject which required close attention from the Commission was local government. With this end in view the Municipal Code (Act 82), the Provincial Gov-

[39] See sec. 72, *supra*.

[39a] The Governor-General of the Philippines, XXI Am. Hist. Rev., Jan., 1916, p. 306.

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ernment Act (Act 83), the Manila Charter (Act 183), the Special Provincial Government Act (Act 1396), and the Township Government Act (Act 1397) were enacted after grave study and investigation. Later and still under its exclusive jurisdiction, the Commission passed the Baguio Charter (Act 1963) and the Organic Act for the Department of Mindanao and Sulu (Act 2408). The earlier laws pertaining to local government, particularly the Municipal Code, were repeatedly amended. Of a similar strictly administrative character was the Reorganization Act (Act 1407), the Civil Service Law (finally revised as Act 1698) and the Election Law (Act 1582).

Fiscal matters received attention in the Customs Administrative Act (Act 355), the Internal Revenue Law (Act 1189 since revised) and the Accounting Act (Act 1792 as revised). The professions—Law, Medicine, Pharmacy, and Dentistry—were regulated. Commercial development was encouraged and regulated by the Mining Law (Act 624), the Trade Mark Law (Act 666), the Public Land Law (Act 926), the Friar Land Act (Act 1120) and the Forest Act (Act 1148). Health of individuals was protected in the Pure Food Law (Act 1655) and of animals in Acts 1147 and 1760.

The subjects, of possibly the most interest concerning which the Commission took action, are those which touch the judiciary and the Spanish codes, especially procedure. Act 136 provided for the organization of the courts. Various Acts amplified the Penal Code. The Corporation Law (Act 1459) and the Chattel Mortgage Law (Act 1508) vitally modified the Spanish substantive law. The Torrens System repealing much of the Spanish Mortgage Law was brought in by Act 496, copied substantially from the Massachusetts law of 1898.[40]

[40] See City of Manila *v.* Lack (1911) 19 Phil. 324; Alba *v.* De la Cruz (1910) 17 Phil. 49; De Jesus *v.* City of Manila (1914)

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The greatest contribution to the jurisprudence of the Islands was a Code of Civil Procedure, enacted after full public discussion on August 7, 1901, as Act 190. Governor Taft writing shortly after the Code went in force said: "The Spanish code of procedure was so full of technicalities as practically to deny justice to the litigant, and the Filipino bar were unanimous in a demand for a change. Judge Ide has drafted the code, and I believe that American lawyers who consult it will testify to the excellence of his work." [41] The Code follows closely the laws and codes of California, Vermont, Georgia, Massachusetts, Mississippi, and Ohio.[42] "The California Code," the Chief Justice has said, "is its true legal precedent." [43] Matters in the Code which to the Commission in its annual report for that year [44] seemed most important were the radical departure from the Spanish procedure; challenging of judges and other court officials is abrogated; civil liability of judges and justices of the peace for error in their judicial determination is done away with; and the sittings and proceedings of every court of justice are made public except when testimony is of an indecent character such as to require the exclusion of the public in the interest of morality.

§ 161. Acts of the Philippine Legislature.—In volume, the Acts of the Philippine Legislature, constituted by the Philippine Assembly and the Philippine Commission, together with Acts of the Commission passed by it under

XIII O. G. 130; Enrique Altavas, Systems of Land Registration in the Philippines, III Philippine Law Review, Jan., 1914, p. 126.

[41] Wm. H. Taft, Civil Government in the Philippines, 71 Outlook, May 31, 1902, p. 305, printed in his "The Philippines," p. 64.

[42] See the Code of Civil Procedure as compiled, including citations to the known origin in the State Codes of the various sections.

[43] Yangco *v.* Rhode (1902) 1 Phil. 404, 410.

[44] Report 1901, Vol. I, pp. 86-90. See further Public Session Minutes of the Philippine Commission, 1901, pp. 734 *et seq.*, 861 *et seq.*

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its exclusive jurisdiction, have brought the number up to over 2600. These fill nine bulky books of Public Laws.

The Philippine Assembly signalized its inauguration by the introduction and passage of the Gabaldón Act, appropriating one million pesos for barrio schools. Interest in education was thereafter continuously manifested especially by an Act (1870) authorizing a University of the Philippines. But it was natural that much of the work accomplished by the Philippine Commission should not be deemed satisfactory or should have become obsolete because of the passage of time. Accordingly we find various amendments of the Election law, revision of prior laws, as Internal Revenue (Act 2329), judicial and health reorganization (Acts 2347 and 2468), and an Administrative Code (Act 2657). It was natural also that love for the native land should find expression in the passage of patriotic laws, such as one authorizing a Pantheon of Illustrious Filipinos (Act 1856), another the purchase of the books of Rizal (Act 2021), and still another approving a plan for a national capital (Act 1841).

A creative tendency, which deserves special praise, and which was not ashamed to adopt legislation indorsed by such bodies as those on uniformity of laws, was shown. Thus there were established a Bureau of Labor (Act 1868), a Board of Public Utility Commissioners (Act 2307), a Philippine National Library (Act 2572), and a Philippine National Bank (Act 2612). Progress was indicated in the enactment of such modern laws as a Bankruptcy and Insolvency Law (Act 1956), the Negotiable Instruments Law (Act 2031), the Warehouse Receipts Law (Act 2137), the Irrigation Law (Act 2152), a Motor Vehicle Law (Act 2159), the Registration and Protection of Patents (Act 2235), the Cadastral Act (Act 2259), a Fiber Inspection Law (Act 2380), the

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Insurance Act (Act 2427), and the Usury Law (Act 2655).

§ 162. Codification.—If the Spanish Codes, the General Orders of the Military Governors, and the Acts of the Philippine Commission and Legislature were analyzed, Philippine law would be disclosed as in the following tumultuous condition: *Civil Law,* found principally in the Civil Code, the Law of Waters, the Code of Civil Procedure, the Mortgage Law, the Chattel Mortgage Law, General Orders No. 68, and the Irrigation Law; *Commercial Law* in the Code of Commerce, the Corporation Law, the Insolvency Law, the Negotiable Instruments Law, the Warehouse Receipts Law, and the Insurance Act; *Criminal Law* in the Penal Code and the various penal Acts of the Philippine Commission and Legislature; *Political Law* in a multitude of statutes including seven special local and provincial charters; and *Remedial Law* in the Code of Civil Procedure, Code of Criminal Procedure, *Ley Provisional,* and the Land Registration Law.[45] The ancient mingled with the modern and substantive joined with adjective was the graphic but intolerable picture.

The wisdom of retaining much of the Spanish Civil Law and of engrafting only necessary additions was conceded. But in practice the result was that the courts and the bar have never been certain as to what the law is. Very seldom has the Legislature expressly repealed inconsistent statutes. To ascertain in any particular instance whether there is an implied repeal is difficult enough, but to find whole chapters and titles affected, to be required to harmonize antagonistic systems, and not to be able to get court decisions at will was an impossible

[45] In *extenso* outline in Laurel, What Lessons may be derived by the Philippine Islands from the Legal History of Louisiana, II Philippine Law Journal, Sept., 1915, p. 63.

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situation. One very able Justice of the Supreme Court endeavored to indicate what portions of the Spanish Civil Code were still in force.[46] Another lawyer of long experience went through the Civil Code for the same purpose and accepted about half of the commentaries of the Justice as correct. Each lawyer or judge was entitled to his own particular guess.

As temporary expedients portions of the laws were compiled. As the Compilation Committee reported "the first step toward the final revision and codification of all the laws of the Philippine Islands" was taken in the printing of the Compilation of the Acts of the Philippine Commission. Also the Charter and Revised Ordinances of the city of Manila, the Election Law, the Corporation Law, the Municipal Code and the Provincial Government Act, the Public Laws of the Legislative Council of the Moro Province, the Penal Code, the Code of Civil Procedure, and other laws were compiled and annotated. Some of these were not official. All were at most merely useful reference books. The need was, as in Louisiana, for conservative adaptation rather than hasty innovation. The need was, as in Porto Rico, for something more than compilation—for careful, permanent revision and codification.[47]

Act 1941 going into operation in 1909 and 1910 created "a code committee composed of a president and four members for the purpose of revising the Civil, Commercial, Penal, and Procedure Codes which have been in force to date and the Mortgage and Land Registration Acts, and to prepare new codes upon said matters in accordance with modern principles of the science of law

[46] Willard's Notes to the Spanish Civil Code.

[47] For Porto Rico, see Rowe (a member of the Code Committee) the United States and Porto Rico. For Louisiana, see Wigmore Louisiana: The Story of its Legal System, I Southern Law Quarterly, January, 1916, p. 1.

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and with the customs of the country." (Sec. 1.)[48] The Committee was also authorized "to revise, compile, and codify the existing general statutes of the Philippine Commission and Philippine Legislature and to report the same so codified to the Legislature for adoption as the revised statutes of the Philippine Islands." (Sec. 7.) In somewhat bungling language the purpose appears to have been to have all Philippine law revised and codified in new codes.

The Code Committee took as the bases of its work that there should be four codes: Political Code (later changed to Administrative Code), Civil Code, Penal Code (later changed to Correctional Code) and Remedial Code, to embrace all general laws, and a fifth book for special and local laws.[49] The plan of the Committee provided that the Administrative Code was to contain the public laws, or the laws relating to governmental constituents, organization and administration, including public property, revenues, work, education, health and morals; the Civil Code, the private laws or the laws governing private persons, and their inter-relations, property, and obligations; the Correctional Code, the laws relating to crimes and punishments; the Remedial Code, the laws relating to relief, and to procedure in civil and criminal cases, including the law of evidence; and the Special and Local Laws, the laws not included in the foregoing codes. The scheme has been adhered to quite generally.

The Administrative Code very properly takes the great mass of institutional Acts and arranges them in a code. The Code is divided into four grand divisions. Book I treats of the organization, powers, and general adminis-

[48] Code Committee described by Pamatmat, II Philippine Law Journal, Nov., 1915, p. 179.

[49] Plan of Oct. 18, 1909. See W. L. Goldsborough (a member of the Code Committee), Mechanics of Codification, XXV Green Bag, Dec., 1913, p. 496.

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tration of the Philippine Government; included therein are the executive power, the legislative power and the judicial power, government service and employment in general, and taxation. Book II concerns the organization and administration of Bureaus; these are considered by departments. Book III is entitled "Government of Provinces and other political divisions;" this covers provincial governments, municipalities, townships and settlements, chartered cities (the city of Manila and the city of Baguio), and the Department of Mindanao and Sulu. Book IV is the "penal supplement."

The preparation of the Civil Code required mainly a careful joinder of acts of American origin with the Spanish Civil Code and the remnant of the Spanish Commercial Code in one scientifically arranged whole. The Philippine Commission in its report for 1901 said that "it is the intention of the Commission, as soon as practicable, to make a complete revision" of the Spanish laws governing business transactions "into a single Civil Code, but without changing the fundamental principles of the Civil Law which here prevailed." [50] A leading authority on the Civil Law quite similarly says that "If the conflicting differences between the local and common law, peculiar to Spain and which have little force in . . . the Philippines are eliminated from the Spanish Civil Code, and a few amendments in harmony with United States institutions are substituted for the provisions which relate to monarchial institutions, then would result, in the opinions of those familiar with the subject, a most excellent code suitable for the people of the Philippines." [51] The plan of the Code Committee is concordantly to leave fundamentals unchanged. The Civil Code is divided into five books: Book I, Persons; Book II, Family Rights;

[50] Report 1901, Vol. I, p. 91.
[51] Walton's Civil Law in Spain and Spanish-America, p. 112.

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Book III, Property; Book IV, Successions; Book V, Obligations and Contracts (including donations).

The need of a new code to take the place of the Penal Code with its harsh penalties, its recognition of monarchial forms, and its unbending rules has long been recognized.[51a] A new Criminal Code was prepared as early as 1901 but was never acted upon. The Correctional Code prepared by the late Rafael del Pan shows, by its name, a purpose to advance with the science of Criminology and Penology. The author investigated widely all the leading penal systems of the world. His great idea was to present a Code which would relegate into the past antiquated notions of revenge upon the criminal in order to provide a modern system of reform. The Correctional Code will stand as a monument to his erudition and progressiveness.

The Remedial Code continues the Codes of Criminal Procedure and Civil Procedure and numerous procedural acts with little change. The Code of Criminal Procedure has never been found wanting. The Code of Civil Procedure has been criticized as defective and as lacking in method and symmetry. Curing manifest defects, omitting duplications, but not disturbing established precedents was the intent in preparing the Remedial Code. It is divided into three parts: General Matters, such as organization of the courts, jurisdiction, venue, attorneys at law, and evidence; Civil Procedure; and Criminal Procedure.

As this book goes to press only the Administrative Code (Act 2657) has been passed by the Philippine Legislature. It is thus too early to anticipate results. Is it too much to hope, however, that Philippine amalgamation will come out of the crucible of codification and legislation as flawless as the Codes of our nearest prototypes—Porto Rico and Louisiana?

[51a] See 42 Am. Law Rev., Jan., Feb., 1908, p. 116.

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§ 163. Joint and concurrent resolutions.—Every session sees a number of joint and concurrent resolutions passed by the Philippine Legislature. The first action of the Philippine Legislature took the form of a Joint Resolution "conveying to the President of the United States and through him to Congress and the people of the United States the gratitude of the people of the Philippine Islands and the Philippine Assembly and their high appreciation of the privilege conceded to them of participating directly in the making of the laws which shall govern them." [52] The general subjects covered in such resolutions have related to appointments of special committees, instructions to the Resident Commissioners, petitions to Congress, validation of action, and adjournments.

As there are no constitutional restrictions relative to the form which Philippine statutes shall take, a resolution might here lay down a rule of conduct having the effect of law. Usually, however, as in other jurisdictions, a resolution proper would express merely an opinion or desire of the legislative body, or take that method by which to govern its own procedure.[53]

§ 164. Executive orders, proclamations, rules, regulations, and circulars.—The European practice of confining a statute to a declaration of principles or policy and authorizing the development of details by "Orders in Council" or *decrets* of the Executive is coming to be popular.[53a] The Philippine Legislature has in various Acts delegated the power to carry laws into effect to dif-

[52] Printed in Volume 7, Public Laws, p. 337.

[53] Compare Swann *v.* Buck (1866) 40 Miss. 268, and San Antonio *v.* Micklejohn (1895) 89 Tex. 79.

[53a] See Barrows, The Governor-General of the Philippines, XXI Am. Hist. Rev., Jan., 1916, pp. 306-308.

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ferent executive officials.[54] In other instances this authority has been assumed by heads of governmental offices under some inherent right which it is hard to place. Within the official sphere affected and often as affecting the public, such executive action is controlling, and may usually be considered as a law.[55]

Executive rules, Professor Willoughby observes, fall into two general classes—"First, those established by an administrative superior and directed solely to the administrative inferior; secondly, those binding of course the administrative inferiors, but primarily directed to the private citizen, and fixing the manner in which the requirements of the statute are to be met by him. This second class of rules is, in turn, divisible into two classes; those to which a criminal penalty is attached for their violation, and those merely defining the manner in which rights created by the statute are to be enjoyed. The first of these two main classes of administrative ordinances differ from those of the second class in that though valid as between the administrative superior and his inferior, they do not create legal rights which the private citizen may enforce in the courts. . . . As to those rules or ordinances, established by executive agents, providing the modes under which private persons may receive the privileges granted by law or be held responsible for violations of the duties imposed therein, it may in general be said that the executive may establish all special regulations that fall within the general field of the authority granted by law, and which are reasonably calculated to secure the execution of the legislative will as laid down

[54] See sec. 118 *supra* for discussion of constitutional right of Legislature to delegate authority to administrative officials.

[55] Olsen & Co. *v.* Herstein (1915) XIV O. G. 166; Chun Toy *v.* Insular Collector of Customs (1915) XIII O. G. 2206; Villata *v.* Stanley (1915) XIV O. G. 170.

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in the statutes." [56] Mr. Justice Moreland, considering Executive Order No. 41 of the Insular Collector of Customs, found it to be of the first class because "it is nothing more or less than a command from a superior to an inferior." He further said:

"It creates no relation except between the official who issues it and the official who receives it. Such orders, whether executive or departmental, have for their object simply the efficient and economical administration of the affairs of the department to which or in which they are issued in accordance with the law governing the subject-matter. They are administrative in their nature and do not pass beyond the limits of the department to which they are directed or in which they are published, and, therefore, create no rights in third persons. They are based on, and are the product of, a relationship in which power is their source and obedience their object. Disobedience to or deviation from such an order can be punished only by the power which issued it; and, if that power fails to administer the corrective, then the disobedience goes unpunished. In that relationship no third person or official may intervene, not even the courts. Such orders may be very temporary, they being subject to instant revocation or modification by the power which published them. Their very nature, as determined by the relationship which produced them, demonstrates clearly the impossibility of any other person enforcing them except the one who created them. An attempt on the part of the courts to enforce such orders would result not only in confusion but, substantially, in departmental anarchy also." [57]

The Governor-General is expressly authorized by section 79 of the Administrative Code to make effective his

[56] Willoughby on the Constitution, Vol. II, pp. 1325 *et seq.*
[57] Olsen & Co. *v.* Herstein, *Id.*

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"administrative acts and commands" by executive orders or proclamations. He annually issues over one hundred executive orders and numerous proclamations. In compass, they yearly make a fair sized volume. Many are merely formal and ministerial in character. Some of the matters most frequently taking the form of executive orders or proclamations are reservations of public lands, confirmations of elections, calling special elections, promulgating laws or resolutions, publishing proclamations of the President, naming boards and committees, creating or transferring barrios and municipalities, and announcing holidays.

An infinite variety of orders, rules, regulations, and circulars are promulgated by the Secretaries of Departments and heads of Bureaus. Of these there can be mentioned off hand circulars of the Executive Secretary, the Civil Service Rules prepared by the Bureau of Civil Service and approved by the Governor-General, the provincial division circulars of the Bureau of Audits, a constabulary manual, regulations and circulars of the Bureau of Health, animal regulations and orders of the Bureau of Agriculture, circulars of the Bureau of Internal Revenue, rules of the Board of Public Utility Commissioners, land and forestry regulations, and customs rules, regulations, and circulars. The list is of course no where near inclusive, for there is practically no government office but which takes such action in some form.

§ 165. Rules of court.[58]—The Judiciary Organization Act provided that "The judges of the Supreme Court shall make all necessary rules for orderly procedure in the Supreme Court and Courts of First Instance, and courts of justices of the peace, and for the admission of lawyers to the practice of the law before such courts, in accordance with the provisions of the Code of Civil

[58] See generally 7 R. C. L. 1023 *et seq.*; 11 Cyc. 739 *et seq.*

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Procedure, which rules shall be uniform for all the courts of the same grade, and binding upon the several courts; but the judges of the Supreme Court may at any time alter or amend such rules." [59] The Code of Civil Procedure, in its section 6, restates the same idea as follows: "The judges of the Supreme Court shall prepare rules regulating the conduct of business in the Supreme Court and in the Courts of First Instance. The rules shall be uniform for all Courts of First Instance throughout the Islands. Such rules, when duly made and promulgated and not in conflict with the laws of the United States or of the Philippine Islands, shall be binding and must be observed, but no judgment shall be reversed by reason of a failure of the court to comply with such rules unless the substantial rights of a party have been impaired by such failure." Chapter II of the Code of Civil Procedure authorizes general or special rules to be formulated by the Supreme Court for the conduct of bar examinations.

By virtue of power having the force of organic law which could be added to but not taken away,[60] the Supreme Court promulgated "Rules of the Supreme Court of the Philippines," "Rules for the Examination of Candidates for admission to the practice of law," and "Rules of the Courts of First Instance, Philippine Islands." [61] These rules, as the Supreme Court itself has said, "are few and simple." However, "They are the laws of the court and must be obeyed until repealed, unless it can be shown that they are in conflict with the laws of the United States or of the Philippine Islands." [62]

[59] Act 136, sec. 28.

[60] Philippine Bill, sec. 9; *In re* Guariña (1913) 24 Phil. 37.

[61] Rules printed in Volume VII Phil. Rep., pp. VII-XXI, later amended.

[62] Paterno *v.* City of Manila (1910) 17 Phil. 26, citing cases.

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Rules of Court promulgated by authority of law, and not in conflict with law, have the effect of law.[63] Rules of Court not put in force as provided by law or not in accord with the provisions of the statutes, or unreasonable or deprivatory of legal rights, are of no force.[64]

§ 166. The administrative code of the department of Mindanao and Sulu is a compilation of the Acts of the former Legislative Council of the Moro Province, and of the executive orders, circulars, and regulations issued thereunder, revised and modified to conform to the Organic Act for the Department of Mindanao and Sulu.[65] Further rules and regulations and instructions necessary to carry the Code into effect are appended. The Administrative Council of the Department, with the approval of the Governor-General, amends the Code from time to time.

The Governor of the Department of Mindanao and Sulu, with the approval of the Administrative Council, is also authorized to make and prescribe rules for the general welfare.[66]

[63] Inchausti *v.* De Leon (1913) 24 Phil. 224, 226; 11 Cyc. 739 *et seq.*

[64] Song Fo *v.* Veloso (1914) 26 Phil. 575, holding that the rule of practice which is alleged to be in force in the Court of First Instance of Manila whereby the clerk is directed to "place on the trial calendar all causes pending and at issue" and that in such cases "Notice of trial will not be sent to attorneys or litigants, and failure to receive said notices will not be considered an excuse for non-appearance," has never been put in force under the provisions of section 6 of Act 190; is not of uniform application throughout this jurisdiction; and is in direct conflict with the practice followed in many of the courts throughout the Islands. See also 11 Cyc. 740.

[65] Code authorized by Act 2408, sec. 55. See also sec. 27 (*j*), Act 2408, and sec. 2564, Adm. Code. These laws have the effect of continuing "existing legislation." Acts of Legislative Council enacted pursuant to Act 787, secs. 12, 13.

[66] Act 2408, sec. 8 (*s*).

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§ 167. Provincial resolutions.—Provincial boards issue resolutions or take action under another name having the same effect.[67]

§ 168. Municipal ordinances and resolutions.[68]—All of the local governments, the city of Manila, the city of Baguio, and the municipalities and the townships are authorized by the Legislature to enact ordinances and resolutions, although the more general term "regulation" is also used. The city of Manila compiles its ordinances as "The Revised Ordinances of the City of Manila."

Municipal ordinances are local laws prescribing a general and permanent rule.[69] Resolutions only differ in being of a special or temporary character ordinarily enacted with less formality.[70] Both ordinances and resolutions are as binding upon the people within the municipality, but not beyond it, as are the Acts of the Legislature within the Philippines.[71]

So-called unwritten.

§ 169. English and American common law.—What is common law? Chancellor Kent defines it as "those principles, usages and rules of action applicable to the government and security of persons and property, which do not rest for their authority upon any express and positive declarations of the will of the legislature." [72]

[67] Act 83, sec. 13, as amended; Act 1396, sec. 17, as amended; Act 2408, art. 11.

[68] See sec. 144, *supra.*

[69] Citizens Gas & Mining Co. *v.* Elwood (1888) 114 Ind. 332; Southern Pacific R. Co. *v.* Western Pac. R. Co. (1906) 144 Fed. 160, 181; Trinidad *v.* Sweeney (1905) 4 Phil. 531.

[70] Blanchard *v.* Bissell (1860) 11 Ohio St. 96; Cape Girardeau *v.* Fougeu (1888) 30 Mo. App. 551.

[71] New Orleans Waterworks *v.* New Orleans (1896) 164 U. S. 471, 41 L. Ed. 518; 4 Op. Atty. Gen. P. I. 84.

[72] Kent's Comm. 469. A definition of "common law" sanctioned by the United States Supreme Court is as follows: "As distinguished

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But the term "common law" is used in many equivocal senses. Possibly we can do no better than to think of English and American common law as the whole body of law observed by English speaking countries as distinguished from Roman or civil law. In the United States the common law exists as such in the several states rather than as a body of Federal common law.

For about eleven years the Attorney-General and the courts of the Philippines had followed Anglo-American precedents in the nature of common law without apparently considering to what extent those authorities were binding.[73] In 1912 both the Attorney-General and the Supreme Court on independent questions saw fit to lay down rules as to the weight to be given English and American common law in the Philippines.

In the case of United States *v.* Cuna,[74] the Supreme Court was called upon to decide whether the provisions of section 33 of Act 1761 which in express terms repealed Act 1461 should be construed so as to deprive the courts of jurisdiction after the date when the repealing Act went into effect, to try, convict, and sentence persons guilty of violations of Act 1461, committed prior to that date. There was no doubt that "under the general principles of the common law, the repeal of a penal

from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England." Black's Law Dictionary, p. 332, quoted with approval in Western Union Telegraph Co. *v.* Call Publishing Co. (1901) 181 U. S. 92, 45 L. Ed. 765.

[73] As in U. S. *v.* Vallejo (1908) 11 Phil. 193.

[74] 12 Phil. 241 (1908). Followed in Arnedo *v.* Llorente (1911) 18 Phil. 257, and other cases.

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statute operates as a remission of all penalties for violations of it committed before its repeal, and a release from prosecution therefor after said repeal, unless there be either a clause in the repealing statute, or a provision of some other statute, expressly authorizing such prosecution." [75] But the Supreme Court declined to be bound by this rule, Mr. Justice Carson saying in his opinion that "neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law."

About the same time as has been said, Attorney-General Araneta made similar deductions, together with a further point that the common law as understood in the United States "has not by legislative enactment been adopted or made applicable in these Islands." [76] The Attorney-General's view was as follows:

"We cannot say with certainty that the courts of the Philippine Islands will, in the absence of a statute, be guided by the common law. It has been said that the common law is expanded slowly and carefully by judicial decisions based on a standard of justice derived from the habits, customs, and thoughts of a people, and by this standard doubtful cases are determined; that the office of the judge is not to make the common law but to find it, and when it is found to affix to it his official mark by which it becomes more certainly known and authenticated. The announcement of the law comes from the courts after they have had the benefit of the learning of counsel, which to be comprehensive and useful must embrace a knowledge of the people and their customs as

[75] U. S. *v.* Reisinger (1888) 128 U. S. 398, 401, 32 L. Ed. 480, quoted by court.

[76] 4 Op. Atty. Gen. P. I. 510, 511. But see section 302, Code of Civil Procedure, mentioning "the unwritten law."

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well as a knowledge of the principles established by prior decisions. It is, therefore, reasonable to assume that the courts of the Philippine Islands in cases not controlled by statute will lay down principles in keeping with the common law, unless the habits, customs, and thoughts of the people of these Islands are deemed to be so different from the habits, customs, and thoughts of the people of England and the United States that said principles may not be applied here."

Such conclusions find strong support in the historic and juridical facts relating to the adoption and application of the English common law in the United States. The courts of the United States unite in finding that the entire body of English common or unwritten law has been adopted and is in force in most of the states so far as applicable to their conditions and surroundings and not changed by statute, but no farther.[77] Moreover, it could have been added that it is now a much modified common law, coming even to approach the exactness and symmetry of the civil law.

Critically contrasted with the doctrine established in the United States, our Supreme Court and the Attorney-General appear in their quoted opinions to have stated the exceptions to the rule rather than the rule itself. Times without number American and English cases are cited and applied by the Attorney-General and the Insular courts. And this is inevitable when we remember the following: The United States Supreme Court has held that it is "settled that the guaranties which Congress has extended to the Philippine Islands are to be interpreted as meaning what the like provisions meant at the time when Congress made them applicable to the Philippine

[77] Van Ness *v.* Pacard (1829) 2 Pet. 137, 7 L. Ed. 374; U. S. *v.* Reid (1851) 12 How. 361, 13 L. Ed. 1023; 8 Cyc. 377. See also as to common law in the territories Mormon Church *v.* U. S. (1890) 136 U. S. I, 34 L. Ed. 478; 8 Cyc. 386, note 22.

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Islands." [78] So the great cases construing basic principles of Republican government and constitutional rights have the same weight here as in the United States. Again, our Supreme Court, speaking through the same Justice that wrote the Cuna opinion, in a later decision said that "While it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, 'nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law' (U. S. *v.* Cuna, 12 Phil. Rep. 241); nevertheless many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they are derived, and that to breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty recourse must be had to the rules, principles, and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth." [79] The court recently, citing the cases here mentioned, said: "We have frequently held that, for the proper construction and application of the terms and provisions of legislative enactments which have been borrowed from or modelled upon

[78] Serra *v.* Mortiga (1907) 204 U. S. 470, 474, 51 L. Ed. 571, 11 Phil. 762; Kepner *v.* U. S. (1904) 195 U. S. 100, 11 Phil. 669, etc.; and Philippine cases, as Roa *v.* Collector of Customs (1912) 23 Phil. 315, 339.

[79] Alzua *v.* Johnson (1912) 21 Phil. 308, 331; 231 U. S. 106, 58 L. Ed. 142 (1913). In accord is the leading case of Carter *v.* Commonwealth (1899) 96 Va. 791, 45 L. R. A. 310.

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Anglo-American precedents, it is proper and ofttimes essential to review the legislative history of such enactments and to find an authoritative guide for their interpretation and application in the decisions of American and English courts of last resort construing and applying similar legislation in those countries." [80] Add to these decisions, what is necessarily true, that decisions of the United States Supreme Court are binding on Philippine courts; [81] set down the well-known principle of statutory construction that "when a statute is adopted from another state or country and such statute has previously been construed by the courts of such state or country, the statute is deemed, as a general rule, to have been adopted with the construction given to it;" [82] and call to mind that all Philippine remedial and political law, most of the commercial, and a goodly portion of the civil and criminal is of American origin, and there cannot but be realized the far reaching and even dominating influence of English and American common law over the Philippine jurisprudence.[83] What Dean Fenner in an address delivered at the Centennial Anniversary of the organization of the Supreme Court of Louisiana said of that court "that in a very large proportion of the cases decided by this court the law to be applied is sought from the same sources and by the same methods as are resorted to in the Common Law States of the Union"—could be para-

[80] U. S. *v.* De Guzman (1915) XIII O. G. 1173, 1174. See also Arellano, C. J., in Yangco *v.* Rhode (1902) 1 Phil. 404; U. S. *v.* Quinajon (1915) XIII O. G. 1680; and similarly for Porto Rico, Diaz *v.* Porto Rico Railway Co. (1914) 21 Porto Rico 73.

[81] Bryan Landon Co. *v.* American Bank (1906) 7 Phil. 255; U. S. *v.* Pico (1911) 18 Phil. 386.

[82] Lewis' Sutherland Statutory Construction, p. 783; Castle Bros., Wolf & Sons *v.* Go-Juno (1906) 7 Phil. 144.

[83] Just as the common law won victories in India, Canada, and other countries. See Sir Frederick Pollock, The Expansion of the Common Law, pp. 16, 132-134, etc.

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phrased for the Supreme Court of the Philippines. The Philippine Legislature may not have adopted the common law and technically the body of such law may not have effect, but practically speaking, no force of greater influence, not even excepting the codes, can be found in the every day practice of the lawyer and the courts.

§ 170. Spanish common law.—It is difficult to define or describe the common law of Spain.[84] However, we find that both the Civil Code and the Code of Commerce jealously guard local customs and laws. In default of such customs and laws "the general principles of law" the Civil Code provides can be applied by the tribunals.[85] The Code of Commerce in four articles recognizes "the common law." [86]

What is meant by "general principles of law" and "common law?" We need not linger to approximate exact definitions, although from the best consideration given the subject the phrase "general principles of law" as here used, seems to have signified the broad principles of justice, including natural law, scientific law, and the opinions of the jurists.[87] By "derecho común," (common

[84] See Escriche, *Diccionario razonado de Legislación y Jurisprudencia* title "Derecho común;" Walton's Civil Law in Spain and Spanish-America, pp. 110-115.

[85] Art. 6. See also arts. 12, 13, 485, pars. 2, 570, 571, 590, 591, 1555, pars. 2, 1579, 1580, 1976 of the Civil Code. Art 21 of the Louisiana Code provides: "In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent." Dean Fenner adds: "It is clear that here is a recognition of the unwritten law in the broadest sense with a designation of the sources from which it is to be derived that are identical with those to which Common Law judges have resorted from the beginning." Address Centennial Anniversary of the Organization of the Supreme Court of Louisiana.

[86] Arts. 2, 50, 310, 943.

[87] 2 Sánchez Román, *Derecho Civil,* p. 100. Sánchez Román ap-

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law), was meant the law of Castille, including the *Parti-*

provingly cites Valverde, who says: "We think that the legislator proposes to give a greater extension and authority to this phrase. There are principles of justice that are higher than the contingency and variableness of facts; there are higher forms which serve as the foundation for positive law, whatever may be the course of development of the latter; there are rules, accepted by jurists, which constitute true axioms for him who takes part in juridical life, and which doubtless form a law higher than that laid down by the legislator, and it is to these principles, rules and forms that our legislator undoubtedly refers." 2 Sánchez Román, *Derecho Civil,* p. 102. Arribas, a Spanish civilian, believes that the phrase means "the fundamental principles of every law." Cited by Sánchez Román, vol. 2, p. 102, note 1. Manresa holds substantially the same view. He says: "Whether or not the law accepts scientific law, the latter can never be proscribed. As a distinguished jurist says, 'science will always analyze, compare, and emphasize the relations of different provisions, reconcile contradictions, settle questions which the sense of the law offers; and juridical doctrine will be formed more or less rapidly, or more or less slowly, but by necessity; it will establish a general criterion, will formulate or proclaim axioms of law, not only those which we might call traditional but also those which are recently worked out, according to the spirit that may filter into our institutions, and will govern juridical conscience with the same authority as the precept of the legislator. To ignore it is to show ignorance of what the life of the law really is . . .'" 1 Manresa, *Comentarios al Código Civil,* p. 79.

Our Supreme Court has applied the words under consideration in two cases. In The Heirs of Jumero *v.* Lizares (1910) 17 Phil. 112, where the lower court, there being doubt as to the character of the contract under which the defendant held the land in litigation, decided in favor of the defendant, the Supreme Court, per Arellano, C. J., said on pages 115 and 116:

"As to the second assignment of error, it is true that the trial judge while in doubt, and by reason of his doubt, which existed after weighing the contradictory testimony, decided the suit in favor of the defendant. In so doing, he committed no error whatever, but, on the contrary, complied with the second paragraph of article 6 of the Civil Code which provides:

"'When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and, in the absence thereof, the general principles of law.'

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das, as distinguished from the *foral* law.[88] Further, in order that these general principles of law may be admitted as suppletory law, they must always be alleged.[89]

As to the weight in Spain given to the decisions of its highest tribunal, Sánchez Román would impress on the reader that under article six of the Civil Code authorizing the application of general principles of law, "judicial decisions can not be resorted to."[90] Yet this learned commentator admits that repeated decisions on the same point may be binding authority.[91] The general continental rule, inherited from Rome and even expressed in the codes, is that previous decisions are instructive but not authoritative.[92]

Even if a corruption of our section title, what is for us of interest is not to ascertain the exact meaning or force of the Spanish common law in Spain, but to know that the courts of the Philippines give to the decisions of the Supreme Court of Spain an added importance by citing and following these decisions. Other civil law jurisdictions, as France, Porto Rico, Cuba, and Louisi-

"And *it is a general principle of law that, in case of doubt, the condition of he who possesses is the better one.* The defendant in whose favor the doubt was decided is the possessor." See also Urrutia & Co. *v.* Pasig Steamer and Lighter Co. (1912) 22 Phil. 330. The court through Torres, J., held that although compensation was not provided for by any law, yet it should be given, in accordance with the demands of "strict justice."

[88] 1 Sánchez Román, p. 76; I Blanco, *Derecho Mercantil,* pp. 341 and 342. See art. 15, Civil Code. "The *partidas* is still the basis of Spanish common law, for the more recent compilations are chiefly founded on it, and cases which cannot be decided either by these compilations or by the local fueros must be decided by the provisions of the *Partidas.*" IV Dunham, History of Spain, p. 109.

[89] Decisions of the Supreme Court of Spain of October 16, 1894, and May 30, 1898; 1 Manresa, *Comentarios al Código Civil,* p. 81.

[90] 2 *Derecho Civil,* pp. 79-81; also 1 Manresa, p. 80.

[91] *Id.,* pp. 69-71. See also 1 Amandi, *Código Civil,* pp. 27 *et seq.*

[92] See Holland's Jurisprudence, 11th Ed., pp. 68-70.

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ana are gone to for authorities, but the main reservoir is always Spain. Taking the last volume of Philippine Reports at hand (Volume 27), cases coming from the Supreme Court of Spain are cited by the Supreme Court of the Philippines twenty-five times. The first volume of Philippine Reports shows Spanish decisions cited sixty-three times, indicating a decline in use. In proportion. therefore, to American precedents, the influence of Spain is comparatively slight, and with a new Penal Code, will be still further diminished. Nevertheless, now and for a long time to come, Spanish jurisprudence will be worthy of special notice.

Of course the sovereignty of Spain in the Philippines having passed, the weight of the decisions of its courts can not be of primary authority. The decisions of the Supreme Court of Spain are merely referred to by the Supreme Court of the Philippines for guidance. Just as in civil law countries the doctrine of precedents does not obtain in its integrity, so as an opinion of a foreign jurisdiction, a decision of the Supreme Court of Spain, will be treated merely as persuasive authority.[93] The United States Supreme Court was recently asked to hold Spanish cases binding on facts coming from Porto Rico. It declined, Mr. Justice Holmes, saying:

"The Spanish decisions . . . have not the same effect as do those construing a statute subsequently copied by another state. They were rendered after Porto Rico has ceased to be subject to Spanish jurisdiction, and although entitled to great consideration, which no doubt they received, they do not preclude the local court from exercising an independent judgment. The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the court of the Islands is called on

[93] See Black's Law of Judicial Precedents, pp. 21 *et seq.*, 447 *et seq.*

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constantly to deal, and we are not prepared, as against the weight properly attributed to the local decision, to say that it is wrong." [94]

§ 171. Customary law.—It is not at all strange that, with the Malay customary law so highly developed as it was in pre-Spanish times and with recognition of its existence by Spain, customs and usages should have persisted through the centuries even unto the present.[95] These have varied in extent and weight in an inverse proportion to the vigor of Spanish or American control. Practically supreme until recently among the Moros, the Tagbanuas, and the northern peoples, customs are even now controlling throughout the land to a degree not generally appreciated.

Since customs are handed down as tradition by word of mouth, since these vary with different regions, and since but rarely has anyone taken the pains to write them down, the nature of all such customs it is impossible to describe. The old men versed in the law, as the "Lalakai" of the Igorots, unfortunately employing no reporter of decisions, volumes would be needed to encompass Philippine customary law due to its extensive ramifications. Fabian de la Paz in a thesis on Customary Law has written interestingly of the subject, under the heads of Marriage, Property, and Obligations. But, as the learned Epifanio de los Santos says:

"In the Philippines, whoever wants to know . . . the laws on testamentary succession, and the practice followed, in certain places, with reference to wills until the promulgation of the Civil Code, and even after that, will only have to open *Parrocho de Indos* of Casimiro Diaz,

[94] Córdova *v.* Folgueras (1913) 227 U. S. 375, 57 L. Ed. 556. But see Kealoha *v.* Castle (1908) 210 U. S. 149, 52 L. Ed. 998, in which a construction given to a statute by the courts of Hawaii in 1890, before annexation, was followed.

[95] See Ch. 2 hereof.

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and there he shall find the *Práctica de Testamentos* of Murillo Velarde, and thus he shall learn the ways in which a Filipino distributed his property. In such pamphlets as the *Parrocho, Confesionarios, Catecismos,* prayer-books, which nobody reads at present, because perhaps it is more convenient to ignore them, one may unexpectedly, as we have said in another part, discover the customary law of the native, and the written and customary law of the colonizers imposed on the country, and the procedure or juridical practice, whether, relating to ecclesiastical law, to the ordinary law, to the military law, or to the inquisition courts, and to other peculiarities of the juridical life of the country." [96]

At least we know that among the Moros customs approximating the dignity of written codes exist. We know that among the peoples of the Mountain Province and elsewhere, there are extant rudimentary principles applicable to almost every possible situation. We know that customs can be found even within sight of the metropolis. And by comparison, we find that many present customs and usages are identical with those of the traditional age.

Philippine written law has lent recognition to customs. Article six of the Civil Code provides that "when there is no law exactly applicable to the point in controversy, the customs of the place shall be observed." [97] The Code of Commerce is somewhat to the same effect as to commercial transactions.[98] The Organic Act for Mindanao and Sulu takes cognizance of the customs of the Moros.[99]

The courts have considered the force of customs in

[96] Biography of Ignacio Villamor, 1 Philippine Law Journal, Jan., 1915, p. 256.

[97] See also articles of Civil Code cited under Spanish common law.

[98] See especially art. 2.

[99] Act 2520, sec. 3, quoted in next section.

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a number of cases. How often the judges of the Mountain Province, of Mindanao and Sulu, of Palawan and other places have modified judgments to plumb with local usage and law, it is impossible to say. The United States Supreme Court confirmed a title to land held in accordance with Igorot customs.[100] The Supreme Court of the Philippines examined and construed Moro customs and codes but found itself not warranted in recognizing title to a tract of land as in a Moro datto.[101] The same Court held that a tribal marriage ceremony will not be recognized as legal.[102] It said, in an opinion by Mr. Justice Torres, that: "A contract for services or work to be performed exists not only where a certain and definite compensation has been expressly agreed upon, but also where the same can be ascertained from the customs and usages of the place in which such services were rendered." [103] And in reversing a judgment because it did not take into account a universal practice, the Court, through Mr. Justice Moreland, spoke of "the sanction of the strongest of all civil forces, the customs of a people." [104]

Such is the general situation of Philippine customary law as viewed by the written law and by the courts. In addition, there can be little doubt that as occasion requires, the courts will apply well-established definitions and principles, a few of which we append:

A custom is a law established by long usage.[105] One

[100] Cariño *v.* Insular Government (1909) 212 U. S. 449, 53 L. Ed. 594.

[101] Cacho *v.* Government of the United States (1914) 28 Phil. 616.

[102] U. S. *v.* Tubban (1915) XIII O. G. 425.

[103] Smith *v.* Lopez (1905) 5 Phil. 78, 82. See also Lichauco *v.* Armstrong (1910) 17 Phil. 39; Urruita & Co. *v.* Pasig Steamer and Lighter Co. (1912) 22 Phil. 330.

[104] Martinez *v.* Van Buskirk (1910) 18 Phil. 79.

[105] Linn-Regis *v.* Taylor, 3 Lev. 160; 2 Blackstone Comm. 263;

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case tritely describes custom as "local common law." [106] Mr. Chief Justice Arellano (*Lección del Derecho Civil*) defines custom "as the rule of action and conduct formed by the repetition of acts uniformly observed as social conduct formed through the tacit consent of the legislator." The Louisiana Civil Code says: "Customs result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent." [107] The community, not the state, formulates customary law by co-operative action. Usage refers to a general habit, mode, or course of procedure.[108] "We must not confound custom with usage; usage is no more than a fact, custom is a law; there may be usage without custom, but there can be no custom without usage to accompany or precede it: usage consists in the repetition of acts, and custom arises out of this repetition." [109] Customs to be considered as such must be ancient, certain and uniform, current, consistent, continued, general, known, moral, acquiesced in, and reasonable. [110] The

Strother *v.* Lucas (1838) 12 Pet. 410, 445, 9 L. Ed. 1137; Wilson, The State, p. 587.

[106] Hammerton *v.* Honey, 24 Wkly. Rep. 603.

[107] Revised Edition of 1900, art. 3.

[108] Lowry *v.* Read (1870) 3 Brewst. (Pa.) 452.

[109] Escriche Dictionary quoted in Cutter *v.* Waddingham (1855) 22 Mo. 206, 284.

[110] 12 Cyc. p. 1028 *et seq.*, article by Dean Lawson, Law Department, University of Missouri; Gareis, Science of Law, pp. 76 *et seq.*; Fabian de la Paz, Customary Law, unpublished thesis, pp. 8 *et seq.* The distinguished Professor Pisa Pajares gives the following recapitulation of the generally accepted requisites which a custom should possess: 1st. Plurality of acts; several solutions of a juridical question occurring repeatedly in every day life. 2nd. Uniformity; that all the solutions given to that juridical question must have been uniform; or better said, there must have been only one solution. 3rd. Lapse of time. And 4th. Juridical intention; that is, the author of the acts must have executed them as just. I

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language of Lord Brougham is that "it is quite plain that as against a plain statutory law no usage (or custom) is of any avail." [111] A general usage and custom need not be pleaded or proved. But Mr. Chief Justice Arellano, declining to approve a contract depending for its existence upon some local custom laid down the rule that "A local custom as a source of right can not be considered by a court of justice unless such custom is properly established by competent evidence like any other fact." [112]

§ 172. Mohammedan law.[113]—The original act providing for the organization and government of the Moro Province attempted to have the Moro customary laws collected, codified, and revised.[114] These laws were then to apply to all actions arising between Moros.

Manresa, p. 76. To which should be added, under the English view, that the custom must be reasonable. *Malus usus est abolendus.* Co. Litt. s. 212.

[111] Magistrates of Dunbar *v.* Duchess of Roxburghe, 3 Cl. & Fin. 335, quoted in Op. Atty. Gen. P. I. May 27, 1912. See also Co-Boo *v.* Lim Tian (1904) 3 Phil. 186; Ang Seng Quen *v.* Juan Te Chico (1909) 12 Phil. 547; Basey *v.* Gallagher (1875) 20 Wall. 670, 22 L. Ed. 452; Swift *v.* U. S. (1882) 105 U. S. 691, 26 L. Ed. 1108.

[112] Patriarca *v.* Orate (1907) 7 Phil. 390, 395.

[113] See generally Najeeb M. Saleeby, Studies in Moro History, Law, and Religion, Ch. II, giving English translations of "the best official Codes of Magindanao and Sulu"; Charles S. Lobingier, The Legal Influence of Islam in the Philippines, a lecture before the Philippine Academy and the law students of the University of the Philippines; same author in XXI Law Quarterly Review, Oct., 1905, pp. 405, 406; Report of General Wood, Sept. 9, 1904; MacClintock, Mohammedan Law in our Philippine Possessions, XXI Green Bay, July, 1909, p. 319. The author has also received the benefit of a communication on the subject from Dr. Saleeby.

[114] Act 787, sec. 13 (*j*), effective July 1, 1903, reading as follows: "To enact laws which shall collect and codify the customary laws of the Moros as they now obtain and are enforced in the various parts of the Moro Province among the Moros, modifying such laws as the legislative council think best and amending them

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Shortly thereafter, on recommendation of the government of the Moro Province,[115] the Philippine Commission repealed the provisions for codification, and instead, authorized the Legislative Council of the Moro Province to modify Philippine law to suit local conditions among

as they may be inconsistent with the provisions of the Act of Congress entitled 'An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes,' and to provide for the printing of such codification, when completed, in English, Arabic, or the local Moro dialects as may be deemed wise. The moro customary laws thus amended and codified shall apply in all civil and criminal actions between Moros. In all civil and criminal actions arising between members of the same non-Christian tribe other than Moros, unless otherwise provided by the legislative council, the customary laws of such non-Christian tribe, if consistent with the Act of Congress above mentioned and if defined and well understood, shall govern the decision of the cause arising, but if there be no well-defined customary laws or they are in conflict with such Act of Congress then the cases shall be determined by the criminal or civil code according to the laws of the Philippine Islands until the legislative council shall make other provision. In actions, civil or criminal, arising between a Moro and a Christian Filipino, or an American or a subject or citizen of a foreign country, the Criminal Code and the substantive civil law of the Philippine Islands shall apply and be enforced."

Thus following the example of the British, Dutch, and French governments. R. K. Wilson, Digest of Anglo-Muhammedan Law; Reinsch, Colonial Government, Ch. XVIII. The Statute 21 Geo. III. c. 70, sect. 17, in declaring the powers of the Supreme Court at Calcutta, provides that "inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentûs by the laws and usages of Gentûs, and when only one of the parties shall be a Mahomedan or Gentû, by the laws and usages of the defendant." Similar provisions with reference to the Courts at Madras and Bombay are contained in 37 Geo. III. c. 142.

[115] "It was found that the customary laws of the Moros and non-Christians were either non-existent or so vague and whimsical as to be impracticable of administration in courts of justice. The

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the Moros and other non-Christian inhabitants of the Province.[116] Such amended laws were to conform when practicable to local customs and usages. Recently, when the Legislative Council was abolished, the Philippine Commission provided that "judges of the Court of First Instance and justices of the peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed wise, may modify the application of the law of the Philippine Islands, except laws of the United States applicable to the Philippine Islands, taking into account local laws and customs: *Provided,* That such modification shall not be in conflict with the basic principles of the laws of the United States of America." [117]

The standing given to Mohammedan law in the Philippines is thus seen. It may not change the complexion of the Philippine legal system permanently. At least for some time to come Mohammedan laws and customs will have to be examined and considered in cases arising in the Moro country and will constitute the basis for settling civil differences outside the courts.

The Koran is, of course, for the Mohammedan the sacred law book, but there is very little strictly legislative matter scattered through it.[118] The Moros further accept

legislative council reached the conclusion that it would be better to apply, with some modifications to suit local conditions, the general laws of the Philippine Islands to these people." Report of the Acting Governor of the Moro Province, July 10, 1905, Report of the Philippine Commission, Part I, 1905, p. 330. See also Cacho *v.* The Government of the U. S. (1914) 28 Phil. 616.

[116] Act 1283, sec. 6 (*b*), effective Feb. 1, 1905. But an opinion of the Attorney-General virtually nullified this subsection. 4 Op. Atty. Gen. P. I. 472. Pursuant to Act 1283, Act 114 was enacted by the Legislative Council and amended and approved by the Philippine Commission on Sept. 4, 1905. The idea is somewhat the same as adopted by the United States for the Indians. See U. S. *v.* Kagama (1886) 118 U. S. 375, 30 L. Ed. 228.

[117] Act 2520, sec. 3, effective April 3, 1915.

[118] R. K. Wilson, Digest of Anglo-Muhammedan Law, p. 9.

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all Mohammedan law. The laws of most general application among the Moros of Mindanao are found in a code known as "Luwaran" (selection) brought to the Island by the Mohammedan conquerors and modified to suit local conditions. The most reliable and scholarly author on Moro history and law in the Philippines, Dr. Najeeb M. Saleeby, a prominent Manila physician, gives an English translation from the Arabic of "the Luwaran, the Magindanao Code of Laws." [119] He says of it generally:

"The term *Luwaran,* which the Mindanao Moros apply to their code of law, means 'selection' or 'selected.' The laws that are embodied in the *Luwaran* are selections from old Arabic law and were translated and compiled for the guidance and information of the Mindanao datus, judges, and *pandita* who do not understand Arabic. The Mindanao copies of the *Luwaran* give no dates at all, and nobody seems to know when this code was made. . . . The Arabic books quoted in the *Luwaran* are *Mināju-l-Arifeen, Tagreebu-l-Intifā, Fathu-l-Qareeb,* and *Mirātū-t-Tullāb.* The first of these, generally known as the *Minhāj* is the chief authority quoted. . . . The compilation of the *Luwaran* must have been made before the middle of the eighteenth century. In making the *Luwaran* the Mindanao judges selected such laws as in their judgment suited the conditions and the requirements of order in Mindanao. They used the Arabic text as a basis, but constructed their articles in a concrete form, embodying genuine examples and incidents of common occurrence in Mindanao. In some places they modified the sense of the Arabic so much as to make it agree with the prevailing customs of their country. In a few instances they made new articles which do not exist in

[119] Given in Saleeby, Studies in Moro History, Law, and Religion, pp. 66-88.

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Arabic but which conform to the national customs and common practices. The authority of the *Luwaran* is universally accepted in Mindanao and is held sacred next to that of the Koran. The Mindanao judge is at liberty to use either of them as his authority for the sentence to be rendered, but as a rule a quotation from the Koran bearing on the subject is desirable." [120]

The "Luwaran" treats of both substantive and procedural law. Family relations, property, commercial intercourse, evidence, and criminal offenses are some of the subjects receiving most attention. The penalties are usually payment of fines. Quotations in Arabic appear as marginal notes.[121] The "Luwaran" is valuable not alone for its contents but as pointing the course to be followed in relation with the Moros.

The Mohammedans of the Sulu Archipelago have likewise developed successively several codes. The present principal Sulu Code is translated by Dr. Saleeby.[122] He also tells of a new Sulu Code, a rearrangement of the old one, but not generally adopted.[123]

As to compliance with the Moro Codes, Dr. Saleeby states:

"In actual practice the Moros do not distinguish between custom and law. Many of their customs are given the force of law, and many laws are set aside on account of contradiction to the prevailing customs of the day. . . .

"The Moros are not strict nor just in the execution of the law. The laws relating to murder, adultery, and inheritance are seldom strictly complied with. Indeed, the

[120] Saleeby, Studies in Moro History, Law and Religion, pp. 64, 65. The *Luwaran* is construed by the Supreme Court of the Philippines in Cacho *v.* Government of the U. S. (1914) 28 Phil. 616.

[121] English translations given by Saleeby *id.*, pp. 82-89.

[122] Given in Saleeby *id.*, pp. 89-94.

[123] Translations given by Saleeby *id.*, pp. 94-100.

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laws of inheritance as given in the *Luwaran* are generally disregarded and are seldom considered at all. Mohammedan law does not recognize classes, except the slave class. But Moro law is not applied equally to all classes. Great preference is shown the datu class, and little consideration is given to the children of concubines.

"The Luwaran, nevertheless, is the recognized law of the land and compliance with it is a virtue." [124]

§ 173. Case law.—The courts would probably indignantly reject the imputation that they make law. Frequently has our Supreme Court vigorously asserted that it should not and would not put on the mantle of the Legislature. Bentham's "Judge made law" it condemns.[125] Yet the courts here as elsewhere do mould and expand the law by their decisions. They breathe life into dead law. They impel to legislative action to cure de-

[124] Saleeby, Studies in Moro History, Law, and Religion, pp. 65, 66.

[125] See Gomez *v.* Hipólito (1903) 2 Phil. 732, Johnson, J., dissenting and Lamb *v.* Phipps (1912) 22 Phil. 456, Trent, J., dissenting, p. 558.

Lord Esher, M. R., says: "There is in fact no such thing as judge-made law, for the judges do not make the law, though they frequently have to apply existing law to circumstances as to which it has not previously been authoritatively laid down that such law is applicable." Willis *v.* Baddeley (1892) 2 Q. B. (C. A.) 324, 326. Another court has said: "This power of construction in courts is a mighty one, and, unrestrained by settled rules, would tend to throw a painful uncertainty over the effect that might be given to the most plainly worded statutes, and render courts, in reality, the legislative power of the state. Instances are not wanting to confirm this. Judge-made law has overridden the legislative department. It was the boast of Chief Justice Pemberton, one of the judges of the despot Charles II, and not the worst even of those times, that he had entirely outdone the Parliament in making law. We think that system of jurisprudence best and safest which controls most by fixed rules, and leaves least to the discretion of the judge; a doctrine constituting one of the points of superiority in the common law over that system which has been

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fects. Authoritative interpretation of the written law by the courts acquires the force of law.

The Courts of First Instance dividing the Philippines into twenty-six judicial districts are courts of record. Unfortunately, no effort is made to publish the opinions of the judges and only occasionally and then on private initiative do their decisions reach the public. The only way by which uniformity is attained under such conditions is by circulars of the Secretary of Finance and Justice and through the judgments of the Supreme Court harmonizing on appeal various inconsistent applications of the law by the several judges of first instance. Moreover, the judges of all inferior courts are bound to accept and follow the decisions of the Supreme Court of the Philippines implicitly.

The Supreme Court of the Philippines has published thirty volumes of reports in both English and Spanish. Due to the freedom of appeal, its revision of all death sentences, its review of the evidence, its right to declare statutes invalid, its exclusive jurisdiction, and the grave questions which the institution of a new government and the blending of different systems of law presented, the opinions of the Supreme Court are of unusually great importance. Having to break new ground, the Supreme

administered in France, where authorities had no force, and the law of each case was what the judge of the case saw fit to make it. We admit that the exercise of an unlimited discretion may, in a particular instance, be attended with a salutary result; still history informs us that it has often been the case that the arbitrary discretion of a judge was the law of a tyrant, and warns us that it may be so again." Perkins, J., in Spencer *v.* State (1854) 5 Ind. 41, 46. Most modern writers agree with the criticism of Austin, upon what he describes as "the childish fiction employed by our judges, that judiciary or common law is not made by them, but is a miraculous something made by nobody; existing from eternity, and merely declared, from time to time, by the judges." Lectures, ii, p. 655; Holland, Elements of Jurisprudence, 11th Ed., pp. 65, 66, note.

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Court could, in initial decisions, keep itself free from hide bound precedent, and could consider the reason of the law rather than the letter. A studious effort is baldly apparent to discourage prolonged litigation and finally to dispose of cases if any equitable construction of the pleadings will so permit.[126]

The Court takes the stand to give testimony in its own behalf as follows:

"The Supreme Court of the Philippine Islands annually disposes of some eight hundred cases, about equally divided between the civil and the criminal dockets, in some five hundred of which written opinions are filed. In addition, an exceptionally large number of motions and incidental matters are disposed of in minute orders; the exceptionally large number of matters of this nature being due, in part at least, to the adoption in this jurisdiction of an American procedural system, without any substantial modification of the substantive law of the Islands as found in the codes of Spain. It is believed that a comparison of these figures with those of the half-hundred courts of last resort in the United States will disclose that the volume of the output of this court, as a whole and per capita of its membership, places it well within the rank of the first half dozen of those courts in this regard. (See the reporters generally and data assembled by the West Publishing Company and published in the Docket.)

"Furthermore, it is to be remembered that in disposing of this large volume of business, this court, unlike the appellate courts of the United States generally, is required, in all criminal cases and in ninety per cent of the civil cases, to review the evidence (which is not required

[126] See for example Rakes *v.* Atlantic Gulf and Pacific Co. (1907) 7 Phil. 359; Manila Railroad Co. *v.* Attorney-General (1911) 20 Phil. 523; Lizárraga Hermanos *v.* Yap Tico (1913) 24 Phil. 504, 513.

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by law to be printed and comes up in the original transcript of the stenographer's notes), so as to ascertain whether the judgment of the lower courts are 'sustained by the weight of the evidence.' " [127]

The salutary effect of uniformity, certainty, and stability in the law will be attained here as elsewhere under American sovereignty by adherence to the rule of *stare decisis*.[128] The Supreme Court would undoubtedly not feel itself bound by *obiter dicta* to be found in previous opinions. As Mr. Chief Justice Marshall once said: "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision." [129] The Supreme Court does, however, suggest rulings to guide a new trial.

Cases taken to the United States Supreme Court on appeal or writ of error become substantially a part of the Philippine Case Law. These opinions, while few in number, have been epochal in effect.

§ 174. Legal treatises.—One can find the names of the leading Spanish commentators and of well-known American text writers mentioned frequently in the Philippine Reports and the opinions of the Attorney-General. The respect accorded the views of Manresa and Viada, of Cooley and Dillon and others and their commanding influence on decisions is noteworthy. In any number of cases their opinions have been accepted without argument,

[127] Alzua *v.* Johnson (1912) 21 Phil. 308, 395.

[128] Kuenzle & Streiff *v.* Collector of Customs (1908) 12 Phil. 117; and Black on Interpretation of Laws, p. 18. But see McGirr *v.* Hamilton (1915) XIII O. G. 878, holding that where a question passes the court *sub silentio,* the case in which the question is so passed is not binding on the court.

[129] Cohens *v.* Virginia (1821) 6 Wheat. 264, 398, 5 L. Ed. 257.

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as decisive. One can search in vain for a writer of Philippine origin cited as an authority.

It is true there are good books by Philippine authors. Ignacio Villamor has written a scholarly *Tratado de Elecciones;* Manuel Ramirez, *Manual de Derecho Civil;* Charles S. Lobingier on Philippine Practice; Teodoro M. Kalaw, *Teorías Constitucionales;* F. R. Feria, Manuals on Criminal Procedure and for Notaries Public and Justices of the Peace; Mariano H. de Joya, *Principios de Derecho Internacional Privado;* and there are others. Such volumes were intended as elementary text books for students or for particular classes. They were not prepared to advocate reforms and accordingly have not caused radical changes in statute law. Neither were they of such an original nature as to be incorporated in the reports.

The field of Philippine forensic literature is a virgin one awaiting the first furrow by the pioneer plowman.

§ 175. Philippine common law.—These words look strange to the eye and sound stranger to the ear. It is time, however, that they should not, for just as every nation must of necessity have its common law, simple or complicated, according to the stage of society, so the Philippines should learn to visualize and enunciate the phrase "Philippine common law." [180] Once so recognized, it can be expanded and extended and be made to embody just and flexible rules.

A retrospective survey will show that there is a Philippine common law. It is influenced by Anglo-American common law and the *derecho común* of Spain, from both of which it takes the locally applicable. It is made up of customs, infinite in variety, illimitable in extent, and powerful in influence. It has as yet not been moulded

[180] Read Jacob *v.* State (1842) 3 Humphr. (Tenn.) 492. Attorney-General Araneta mentions the courts of the Philippine Islands as "building up their system of jurisprudence or common law." 4 Op. Atty. Gen. P. I., 510, 514.

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by Philippine legal treatises. But it has builded up a case law firmly imbedded in precedent.

When the Philippine courts come to apply precedents making up a large portion of the common law of the Islands, they will do so remembering that—decisions of the Supreme Court of the United States on Philippine appeals or on an identical question, decisions of the Supreme Court of the Philippines, and decisions of the court of last resort of any state from which a Philippine statute is taken, are of primary—controlling—authority. Decisions of the Courts of First Instance, official opinions of the Attorney-General of the Philippine Islands, rulings of Philippine executive officials, general opinions of the United States Supreme Court, decisions of the state courts and of Porto Rico, decisions of the Supreme Court of Spain and other foreign jurisdictions, and scientific legal works are of secondary—persuasive—authority.

Construction.

§ 176. Established canons.—The courts and public officers generally in the Philippines are guided in their interpretation of the laws by elementary principles to be found in the Codes.[131] They also apply the rules of American statutory construction as set forth in standard authorities.[132] Combining these provisions of the Codes with the leading doctrines established by the Supreme Court of the Philippines and adding a few acceptable and

[131] Especially arts. 3, 4, 5, 7 of the Civil Code; and secs. 1, 2, 4, 287, 288, 294 of the Code of Civil Procedure taken from the laws of California. Also sec. 6 (old sec. 9), Revised Ordinances, City of Manila.

[132] Cooley, Constitutional Limitations, 7th Ed.; Lewis Sutherland Statutory Construction (leading authority); Black on Interpretation of Laws; and 36 Cyc. 929, will be found cited in the Philippine Reports and the opinions of the Attorney-General.

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unimpeachable authorities, a miniature text on Philippine Statutory Construction would read as follows:

Declaring laws invalid.

Each of the three departments of government and many officials in these departments may be required to pass upon constitutional questions. Only when legal controversies arise do such issues pass out of the realm of the abstract. It is, therefore, the peculiar province and obligatory duty of the judiciary under the American political system to declare laws unconstitutional or invalid (the latter the more appropriate term because of the Philippine status), if they transgress the authority of the legislature. So in the Philippines the courts will pronounce Acts of the Philippine Commission and Legislature repugnant to the fundamental law to be invalid and void.[133] The effect of invalidity is that the invalid act "is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." [134] The courts will further apply the well established rule concerning partial invalidity. "Where part of a statute is void as repugnant to the Organic Law, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. But in order to do this, the valid portion must be so far independent of the in-

[133] Ocampo *v.* Cabangis (1910) 15 Phil. 626, 631; U. S. v. Ten Yu (1912) 24 Phil. 1, 10. See Weems *v.* U. S. (1910) 217 U. S. 378, 54 L. Ed. 803, in which the U. S. Supreme Court took the same attitude as to a portion of a Philippine Code. Possibly more properly speaking "voidable" because a court can not "repeal" a law. Shepard *v.* Wheeling (1887) 30 W. Va. 479; Cooley's Constitutional Limitations, 7th Ed., p. 163.

[134] Norton *v.* Shelby County (1886) 118 U. S. 425, 442, 30 L. Ed. 178; 6 R. C. L. 117. But see Burgess, Political Science and Constitutional Law, Vol. II, pp. 327, 365.

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valid portion that it is fair to presume that the Legislature would have enacted it by itself if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible, and valid statute, which carries out the legislative intent. The void provisions must be eliminated without causing results affecting the main purpose of the Act in a manner contrary to the intention of the Legislature. The language used in the invalid part of a statute can have no legal force or efficacy for any purpose whatever, and, what remains must express the legislative will independently of the void part, since the court has no power to legislate." [135]

That the Supreme Court of the Philippines like the United States Supreme Court exercises the power to nullify statutes cautiously and solemnly is shown by the few laws held invalid.[136] Says Judge Cooley: "It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility." [137] As a general rule, courts will not pass upon a constitutional question or decide a statute to be

[135] Barrameda *v.* Moir (1913) 25 Phil. 44, 47, citing cases. See Pollock *v.* Farmers' Loan and Trust Co. (1895) 158 U. S. 601, 635, 39 L. Ed. 1108; 6 R. C. L. 121.

[136] The U. S. Supreme Court has annulled Congressional legislation in but 33 cases. B. F. Moore, The Supreme Court and Unconstitutional Legislation, Appendix 1. In the Philippines, see Casanovas *v.* Hord (1907) 8 Phil. 125 (Act 1189, sec. 134); Omo *v.* Insular Government (1908) 11 Phil. 67 (Act 648); Weigall *v.* Shuster (1908) 11 Phil. 340 (customs law); Barrameda *v.* Moir, *Id.* (Acts 2041 and 2131); McGirr *v.* Hamilton (1915) 13 O. G. 878 (Act 1627, sec. 16).

[137] Cooley's Constitutional Limitations, 7th Ed., p. 227. Read Ch. VII thereof.

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invalid unless that question is raised and presented and is necessary to a determination of the case; on the other hand, the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where that question is properly raised and presented.[138]

Every statute is presumed to be valid. The United States Supreme Court has announced time and again that "the courts ought not to declare a law to be unconstitutional, unless it is clearly so. If there is doubt, the expressed will of the legislature should be sustained." [139] The Supreme Court of these Islands concordantly has said: "Courts are slow to pronounce statutes invalid or void. The question of the validity of every statute is first determined by the legislative department of the government itself, and the courts should resolve every presumption in favor of its validity. Courts are not justified in adjudging statutes invalid, in the face of the conclusion of the legislature, when the question of its validity is at all doubtful." [140] Again and more specifically—"In construing a statute enacted by the Philippine Commission we deem it our duty not to give it a construction which would be repugnant to an Act of Congress, if the language of the statute is fairly susceptible of another construction not in conflict with the higher law." [141] The same line of reasoning was followed when the Philippine

[138] McGirr *v.* Hamilton, *Id.*, citing Cooley's Constitutional Limitations, p. 231 and decisions of the U. S. Supreme Court; U. S. *v.* Noriega (1915) XIII O. G. 2154. See 6 R. C. L. 76.

[139] Munn *v.* Illinois (1877) 94 U. S. 113, 123, 24 L. Ed. 77, followed in U. S. *v.* Grant, 18 Phil. 122, 140. To same effect Fletcher *v.* Peck (1810) 6 Cranch, 87, 128, 3 L. Ed. 162; Sinking Fund Cases (1879) 99 U. S. 700, 718, 25 L. Ed. 496; Powell *v.* Pennsylvania (1888) 127 U. S. 678, 32 L. Ed. 253; 6 R. C. L. 97.

[140] U. S. *v.* Ten Yu (1912) 24 Phil. 1, 10.

[141] *In re* Guariña (1913) 24 Phil. 37, 46.

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courts came to consider ordinances. "Judicial authority to declare an ordinance unreasonable is a power to be cautiously exercised." [142]

Application of law.

Ordinarily the courts merely apply the law to a statement of facts. "The first and fundamental duty of the courts, in our judgment, is to *apply* the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is." [143]

Cardinal rule of construction.

As above suggested, the courts must in some cases necessarily interpret or construe the law. The one cardinal rule of statutory construction then is *to ascertain and give effect to the intention of the law making body.* The Code of Civil Procedure legislates this into formal law by providing that: "In the construction of a statute, the intention of the legislature . . . is to be pursued; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is incon-

[142] City of Manila *v.* Manila E. R. & L. Co. (1912) 23 Phil. 547, 551.

[143] Lizárraga Hermanos *v.* Yap Tico (1913) 24 Phil. 504, 513, followed in Lambert *v.* Fox (1914) 26 Phil. 588 and in Yangco *v.* Crossfield (1915) 13 O. G. 191. In accord U. S. *v.* Fisher (1804) 2 Cranch, 358, 2 L. Ed. 304.

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sistent with it." [144] The Supreme Court of the Philippines indorses the principle by stating that "where the language of a statute is fairly susceptible of two or more constructions, that construction should be adopted which will most tend to give effect to the manifest intent of the lawmaker and promote the object for which the statute was enacted, and a construction should be rejected which would tend to render abortive other provisions of the statute and to defeat the object which the legislator sought to attain by its enactment." [145] Nevertheless the Legislature must use words which in some way express intent, for a court can not amend the law to make it agree with what it is believed the Legislature must have intended.[146]

Practically speaking, common sense is the best guide for the devious and obscure path of legislation. Mr. Chief Justice Fuller in language followed by our Supreme Court has said that "nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." [147]

[144] Sec. 288. Principle followed in Kepner *v.* U. S. (1904) 195 U. S. 100, 49 L. Ed. 114, 11 Phil. 669.

[145] U. S. *v.* Toribio (1910) 15 Phil. 85, 90; also Uy Chaco Sons *v.* Collector of Customs (1913) 24 Phil. 548 and other cases. "The intent of the Legislature is sometimes little more than a useful legal fiction, save as it describes in a general way certain outstanding purposes which no one disputes, but which are frequently of little aid in dealing with the precise points presented in litigation." From address of Mr. Justice Hughes before the New York State Bar Association, January 14, 1916.

[146] U. S. *v.* Ambata (1904) 3 Phil. 327. But compare with U. S. *v.* Go Chico (1909) 14 Phil. 128 and Lamb *v.* Phipps (1912) 22 Phil. 456, 493.

[147] Lau Ow Bew *v.* U. S. (1892) 144 U. S. 47, 59, 36 L. Ed. 340, followed in Lamb *v.* Phipps, *Id.* To same effect, U. S. *v.* Kirby (1869) 7 Wall. 482, 19 L. Ed. 278, followed in *In re* Allen (1903) 2 Phil. 630.

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Subsidiary principles.

Only a few of the more important subsidiary principles of legislation and canons of construction by which the courts endeavor to ascertain the legislative intent can be mentioned.

In the interpretation of the Code of Civil Procedure certain words named in its section 1 are to have the meaning therein provided "unless the context shows that another sense was intended." Moreover, "words in the present tense include the future tense, and in the masculine gender include the feminine and neuter genders; and words in the plural include the singular, and in the singular include the plural number." [148] But this enumeration does not require a strict construction of other general words. "If in the laws months, days, or nights are referred to, it shall be understood that the months are of thirty days, the days of twenty-four hours, and the nights from the setting to the rising of the sun. If the months are indicated by their names, they shall be computed by their actual number of days." [149] And, "unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday it shall be excluded." [150] Language used in a statute which has a settled and well known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body.[151] A word used in

[148] The words so interpreted are "person," "writing," "oath," "of unsound mind," "bond," "and," "or," "writ," "process," "action," "pleadings," "dollars," "pesos," "territory of the United States." See also Administrative Code, secs. 2, 629, 850, etc.

[149] Civil Code, art. 7; Adm. Code, sec. 7.

[150] Code of Civil Procedure, sec. 4; Adm. Code, sec. 7. See U. S. *v.* Tiqui (1902) 1 Phil. 306.

[151] Kepner *v.* U. S. (1904) 195 U. S. 100, 49 L. Ed. 114, 11 Phil. 669.

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a statute in a given sense is presumed to be used in the same sense throughout the law.[152] Tariff laws are to be construed according to the commercial understanding of the terms used; and such terms are to be taken in their ordinary and comprehensive meaning unless it can be shown that they have acquired a special or restricted meaning.[153] Our Supreme Court has been called upon to construe specific words in a number of other cases.[154] It rightly holds to the view that "where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful." [155] Mr. Chief Justice Marshall, in the historic case of Gibbons *v.* Ogden, said: "As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said." [156]

The Civil Code provides: "Laws are repealed only by other subsequent laws, and disuse or any custom or practice to the contrary shall not prevail against their observance." [157] Express repeals are to be encouraged. Repeals by implication—implied repeals—are not favored. If the statutes can stand together consistently,

[152] Frohlich & Kuttner *v.* Collector of Customs (1911) 18 Phil. 461, 480.

[153] Calder & Co. *v.* U. S. (1907) 8 Phil. 334, following Elliot *v.* Swartwout (1836) 10 Pet. 137, 9 L. Ed. 373, and Arthur *v.* Morrison (1877) 96 U. S. 108, 24 L. Ed. 764.

[154] *E. g.* Lamb *v.* Phipps (1912) 22 Phil. 456, 492; *In re* Guariña (1913) 24 Phil. 37; Yangco *v.* Crossfield (1915) 13 O. G. 191, and Ops. Atty. Gen. P. I. index "words and phrases."

[155] Yangco *v.* Crossfield (1915) 13 O. G. 191.

[156] 9 Wheat. 1, 187-189, 6 L. Ed. 23 (1824).

[157] Art. 5.

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the later statute should not be considered as repealing the earlier one. "It is a most flagrant violation of the rules of statutory construction to give to a statute a meaning which, in effect and in reality, repeals it altogether, where any other reasonable construction is possible." [158] "Before a statute can be held to have repealed a prior statute by implication, it must appear, first, that the two statutes touch the same subject matter, and, second, that the later statute is repugnant to the earlier." [159] As an example of a repeal by implication, where a later statute provides a punishment in a different degree from the punishment provided in an earlier statute for the doing or omitting to do a certain act, the legislator thereby clearly manifests his intention that at least, so far as the later statute is inconsistent with the former statute, it shall be deemed to repeal such former statute by implication.[160] The Administrative Code (sec. 12) provides—"When a law which expressly repeals a prior law is itself repealed the law first repealed shall not be thereby revived unless expressly so provided."

The Civil Code in article 3 provides—"Laws shall not have a retroactive effect unless otherwise prescribed therein." Our Supreme Court says—"All statutes are to be construed as having only a prospective operation unless the purpose and intention of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In every case of doubt, the doubt must be solved against the retrospective effect." [161] However, curative statutes can lawfully be enacted. A ratification by the Legislature is equivalent

[158] Martin *v.* Nacianceno (1911) 19 Phil. 238.

[159] Calderón *v.* Dominicans (1914) 12 O. G. 1698. See also Uy Chaco Sons *v.* Collector of Customs (1913) 24 Phil. 548.

[160] U. S. *v.* Reyes (1908) 10 Phil. 423.

[161] Montilla *v.* Augustinian Corporation (1913) 24 Phil. 220, citing U. S. *v.* American Sugar Co. (1906) 202 U. S. 563, 50 L. Ed. 1149

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to a mandate to perform an act in the first instance, and will be so considered by the courts.[162] A defect in authority may be cured by the subsequent adoption of the act.[163] When a curative statute is enacted, a case must be determined on the law as it stands when judgment is rendered.[164]

Whether there shall be a strict or liberal construction depends upon the nature of the act. The provisions of the Code of Civil Procedure, and in fact all remedial laws, are to be liberally construed.[165] Laws regulating citizenship should receive a liberal construction in favor of the claimant of it.[166] As a general rule, in the interpretation and construction of public grants, such as of titles and franchises, that construction should be adopted which will support the claim of the government rather than of

and other cases. "The courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature. In U. S. *v.* Heth, 3 Cranch 413, 2 L. Ed. 479, this court said that 'words in a statute ought not to have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied'; and such is the settled doctrine of this court. Murray *v.* Gibson, 15 How. 423, 14 L. Ed. 755; McEwen *v.* Den, 24 How. 244, 16 L. Ed. 672; Harvey *v.* Tyler, 2 Wall. 347, 17 L. Ed. 871; Sohn *v.* Waterson, 17 Wall. 599, 21 L. Ed. 737; Twenty Per Cent Cases (1874) 20 Wall. 187, 22 L. Ed. 339."—Harlan, J., in Chew Heong *v.* U. S. (1884) 112 U. S. 536, 559, 28 L. Ed. 770. See Inhabitants of Goshen *v.* Inhabitants of Stonington (1822) 4 Conn. 209, 10 Am. Dec. 121.

[162] Government of the P. I. *v.* Standard Oil Co. (1911) 20 Phil. 30, following U. S. Supreme Court decisions.

[163] Chucoco Tiaco *v.* Forbes (1913) 228 U. S. 549, 57 L. Ed. 960.

[164] U. S. *v.* Heinszen (1907) 206 U. S. 370, 51 L. Ed. 1098.

[165] Code of Civil Procedure, sec. 2; Zamora *v.* City of Manila (1907) 7 Phil. 584.

[166] Roa *v.* Collector of Customs (1912) 23 Phil. 315, 338; Boyd *v.* Thayer (1892) 143 U. S. 135, 36 L. Ed. 103.

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the individual.[167] As to tax laws, Judge Story says: "It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing on a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import." [168] Likewise penal statutes and statutes in derogation of general rights or authorizing summary proceedings are generally strictly construed.[169]

Courts must administer the law, said Mr. Justice Ladd in an early opinion, not as they "think it ought to be but as they (we) find it and without regard to consequences." Where a statute is plain and unambiguous, expediency or practical utility can not be considered.[170] "The wisdom or advisability of a particular statute is not a question for the courts to determine—that is a question for the legislature to determine." So "courts are not justified in measuring their opinion with the opinion of the legislative department of the government, as expressed in

[167] U. S. *v.* Aitken (1913) 25 Phil. 7, 22. Typical instances given in Hall's Cases on Constitutional Law, p. 833, note. See Charles River Bridge *v.* Warren Bridge (1837) 11 Pet. 420, 9 L. Ed. 773.

[168] U. S. *v.* Wigglesworth, 2 Story, 369, followed in Frohlich & Kuttner *v.* Collector of Customs (1911) 18 Phil. 461, 481. To same effect are Castle Bros., Wolf & Sons *v.* McCoy (1912) 21 Phil. 300; Partington *v.* Attorney-General, L. R. 4 H. L. 100; and many American cases.

[169] Tenorio *v.* Manila Railroad Co. (1912) 22 Phil. 411; Topacio *v.* Paredes (1912) 23 Phil. 238. But not always, U. S. *v.* Go Chico (1909) 14 Phil. 128, quoting from U. S. *v.* Wiltberger (1820) 5 Wheat. 76, 5 L. Ed. 37.

[170] Velasco *v.* Lopez (1903) 1 Phil. 720.

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Statutes, upon questions of the wisdom, justice, or advisability of a particular law." [171] Although these are the general rules, nevertheless, the court may consider effects and consequences in proper cases and adopt a construction which will produce the most beneficial results.[172] The Code of Civil Procedure recognizes this fact by providing that "when a statute . . . is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted." [173] Arguments of convenience often address themselves strongly to the court.[174] The physical condition of the country which must of necessity affect the operation of a statute can be considered by a court.[175] An attempt to enforce an impossible act will not be countenanced. And, finally, where a literal interpretation of a statute would thwart the purpose of the legislature or lead to absurd consequences, the court is justified in looking through the form to the substance; in such cases the spirit or reason of the law should prevail over the letter.[176] "For the letter killeth but the spirit giveth life." [177] This must be taken to be the authoritative view

[171] U. S. *v.* Ten Yu (1912) 24 Phil. 1, 10. See also Sharpless *v.* Mayor of Philadelphia (1853) 21 Pa. 147, 59 Am. Dec. 759; 6 R. C. L. pp. 104-111.

[172] Black on Interpretation of Laws, pp. 100 *et seq.* "In obscuris inspici solere quod verisimilius est, aut quod plerumque fieri solet." Dig. 50, 17, 114.

[173] Code of Civil Procedure, sec. 294.

[174] U. S. *v.* Yap Kin Co. (1912) 22 Phil. 340, following Marshall, C. J., in U. S. Fisher (1804) 2 Cranch 386, 2 L. Ed. 304.

[175] Gomez *v.* Hipólito (1903) 2 Phil. 732.

[176] Rector of Holy Trinity Church *v.* U. S. (1892) 143 U. S. 457, 36 L. Ed. 226.

[177] 2 Corinthians iii, 6, quoted in Caples *v.* State (1909) 3 Okla. Crim. Rep. 73, 86, 104 Pac. 493, a decision of the Supreme Court of Oklahoma confessing "to want of respect for precedents which were found in the rubbish of Noah's Ark, and which have outlived their usefulness, if they ever had any," and declining to hold the

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of the Supreme Court of the Philippines, for in the case of *In re* Allen, notwithstanding the stricter doctrine to be found in some other cases, Mr. Justice McDonough, speaking for the court, held that where a literal interpretation of any part of a statute would operate unjustly, or lead to absurd results, or is inconsistent with the meaning of an act as a whole, it should be rejected. In such cases, he said, it must be presumed that the legislature intended exceptions to its language which would avoid such results.[178] Again in the Flag Law Case Mr. Justice Moreland said that literally hundreds of cases might be cited to sustain this proposition: "Language is rarely so free from ambiguity as to be incapable of being used in more than one sense, and the literal interpretation of a statute may lead to an absurdity, or evidently fail to give the real intent of the legislature. When this is the case, resort is had to the principle that the spirit of a law controls the letter, so that a thing which is within the intention of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers, and the statute should be so construed as to advance the remedy and suppress the mischief contemplated by the framers." [179]

So also "clerical errors or misprints, which, if uncorrected, would render the statute unmeaning or nonsensi-

omission of the word "the" before the words "State of Oklahoma" in the caption of the information, fatal. See 5 Op. Atty. Gen. P. I. 609.

[178] *In re* Allen (1903) 2 Phil. 630, following U. S. *v.* Kirby (1869) 7 Wall. 482, 19 L. Ed. 278, and Heydenfelt *v.* Daney Gold Mining Co. (1877) 93 U. S. 634, 23 L. Ed. 995. Compare with Velasco *v.* Lopez (1903) 1 Phil. 720 and U. S. *v.* Ambata (1904) 3 Phil. 327.

[179] U. S. *v.* Go Chico (1909) 14 Phil. 128, 139, quoting from 26 Am. & Eng. Encyc. of Law, 602. See also Uy Chaco Sons *v.* Collector of Customs (1913) 24 Phil. 548.

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cal or would defeat or impair its intended operation . . . will be corrected by the court and the statute read as amended, provided the true meaning is obvious, and the real meaning of the legislature is apparent on the face of the whole enactment." [180]

The English text of Acts of the Philippine Commission and Legislature governs except that in case "of ambiguity, omission, or mistake the Spanish may be consulted to explain the English text. The converse rule shall, however, be applied if so provided in the particular statute." [181] Judicial notice will be taken of the origin, history, and operation of statutes. For statutes borrowed from or modelled upon Anglo-American precedents, a review of their legislative history and judicial interpretation is proper.[182] Statutes of American origin should be construed according to the jurisprudence of the United States.[183] Courts will give weight to the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and, unless such interpretation is clearly erroneous, will ordinarily be controlled thereby.[184] It is a rule well established in the interpretation of Custom Laws that, where there has been a long acquiescence in a regulation by

[180] Lamb *v.* Phipps (1912) 22 Phil. 456, 493.

[181] Act 1788; Adm. Code, sec. 13; Zamora *v.* City of Manila (1907) 7 Phil. 584 and other Philippine cases. Similar regulation and rule in Louisiana as to English and French. See Viterbo *v.* Freedlander (1887) 120 U. S. 707, 30 L. Ed. 776 and Louisiana cases.

[182] U. S. *v.* De Guzman (1915) 13 O. G. 1173.

[183] The rule for the Philippines, U. S. *v.* De Guzman, *Id.;* and for Porto Rico, Diaz *v.* Porto Rico Railway Co. (1914) 21 Porto Rico 73. So the Supreme Court of the Philippines is justified in following the construction placed by California Courts on a law taken from California. Castle Bros., Wolf & Sons *v.* Go Juno (1906) 7 Phil. 144.

[184] *In re* Allen (1903) 2 Phil. 630, following Pennoyer *v.* McConnaughty (1891) 140 U. S. 363, 35 L. Ed. 363.

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which the rights of parties for years have been determined and adjusted, such interpretation should be followed in the absence of the most cogent and persuasive reasons to the contrary.[185]

Often it is imperative to decide if a statute is mandatory or directory.[186] A statute is said to be mandatory when it requires that certain action shall be taken by those to whom the statute is addressed, without leaving them any choice or discretion in the matter, or when, in respect to action taken under the statute, there must be exact and literal compliance with its terms, or else the act done will be absolutely void. A statute which directs the manner in which certain action shall be taken or certain official duties performed is said to be directory when its nature and terms are such that disregard of it, or want of literal compliance with it, though constituting an irregularity, will not absolutely vitiate the proceedings taken under it.[187]

Such a construction is, if possible, to be adopted as will give effect to all provisions of a statute.[188] Statutes *in pari materia* are to be construed together. "Interpretare et concordare leges legibus est optimus interpretandi modus;" that is, to interpret and (to do it in such a way as) to harmonize laws with laws, is an ancient maxim of the law.[189]

By the rule of *ejusdem generis* when a statute describes things of a particular class or kind accompanied by words of a generic character preceded by the word

[185] Kuenzle & Streiff *v.* Collector of Customs (1908) 12 Phil. 117, citing Robertson *v.* Downing (1888) 127 U. S. 607, 32 L. Ed. 269; U. S. *v.* Healey (1895) 160 U. S. 136, 40 L. Ed. 369; Marritt *v.* Cameron (1890) 127 U. S. 542, 34 L. Ed. 772.

[186] See Gardiner *v.* Rómulo (1914) 26 Phil. 521.

[187] Black on Interpretation of Laws, Ch. XIII.

[188] Code of Civil Procedure, sec. 287.

[189] See Black on Interpretation of Laws, pp. 341-349.

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"other," the generic word will usually be limited to things of a kindred nature with those particularly enumerated, unless there be something in the context or history of the statute to repel such inference.[190] But this rule must give away if contrary to the intent appearing from other parts of the law.[191]

Punctuation can be resorted to. "The construction finally adopted should be based upon something more substantial than the mere punctuation found in the printed Act. If the punctuation of the statute gives it a meaning which is reasonable and in apparent accord with the legislative will, it may be used as an additional argument for adopting the literal meaning of the words of the statute as thus punctuated. But an argument based upon punctuation alone is not conclusive, and the courts will not hesitate to change the punctuation when necessary, to give the Act the effect intended by the Legislature, disregarding superfluous or incorrect punctuation marks, and inserting others when necessary." [192]

The will of the Legislature can be educed by necessary inference for it is impracticable to give directions for every detail of application. "That which is implied in a statute is as much a part of it as what is expressed." [193] Various other intrinsic and extrinsic aids to interpretation will be adopted by the courts if necessary.[194] Likewise, presumptions in aid of construction can be indulged in by the courts.[195]

[190] Murphy, Morris & Co. *v.* Collector of Customs (1908) 11 Phil. 456, construing "Other Machinery;" 36 Cyc. 1119; Black on Interpretation of Laws, pp. 203-219.

[191] U. S. *v.* Santo Niño (1909) 13 Phil. 141.

[192] U. S. *v.* Hart (1913) 26 Phil. 149, 152.

[193] Hanchett *v.* Weber, 17 Ill. App. 114. Justice as with a constitution—McCullough *v.* Maryland (1819) 4 Wheat. 316, 4 L. Ed. 579.

[194] See Black on Interpretation of Laws, Chs. VI, VII.

[195] See Black *id.*, Ch. IV.

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That the rules of interpretation under the civil law are surprisingly similar to those of the Anglo-American, of which the previous discussion is mainly a compendium, is shown by a quotation from Manresa:

"The following rules of interpretation are generally accepted. The provisions of the Code or of any other law should not be interpreted separately. Consequently, the rules established for the interpretation of contracts may well be applied in the interpretation of the laws. If the terms of a law are clear and leave no doubt as to the intention of the legislature the literal sense of its provisions shall be observed. If the words should appear contrary to the evident intention of the legislature, the intention shall prevail. In order to judge as to the intention of the legislator, attention must principally be paid to the contemporaneous and subsequent laws. However general the terms of a law may be, there should not be understood as included therein things and cases different from those with regard to which the law-makers intended to legislate. If any provision should admit of different meanings, it should be understood in the sense most suitable to give it effect. The provisions of a law shall be interpreted in relation to one another, giving to those that are doubtful the meaning which may appear from the consideration of all of them together. Words which may have different meanings shall be understood in that which may be in accordance with the object of the law. The usages and customs of the country shall also be taken into consideration. As has been said in our comment on the preceding article, in no case should an interpretation which is contrary to the law be given. So the principle which says that where the same reason exists, there must be an identical provision of the law, can not be successfully set up when there is a legal principle applicable to the case. Where the law does not distinguish we should not also distinguish. In cases not excepted, the exception

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confirms the rule. In the laws where there are exceptions, interpretation by analogy cannot be applied. Where the law grants the greatest, it should be understood as allowing or granting the less; but if it prohibits the less, it must also be understood as prohibiting the greatest. In penal laws or in franchises liberal interpretation can not be allowed, but it may be applied to those laws which are favorable." [196]

A suggestion.

§ 177. Annotate.—Even the foregoing hasty description of Philippine law must impress one with the diversity and ever changing character of our legal system. Its study and interpretation is no easy task. Would it therefore not be advisable for the lawyer to put his work shop in order, and to have his tools at hand and always in shape for use?

The habit of legislative bodies constantly to amend and reamend, points to the suggestion that students and lawyers for convenience and security should keep their laws annotated up to date. Many a case has been lost, because counsel knew only what the law had been or might be, not what the law then was. Add to these annotations, citations of interpretary decisions of the courts and miscellaneous notes, and you are as certain of the law as one can reasonably be. You then have the advantage over him who must waste precious time, perchance searching aimlessly for a law or decision, and who must give advice which may perhaps be wrong.

Vigilantibus et non dormentibus jura subservient—The laws serve the vigilant, not those who sleep!

[196] I Manresa, *Comentarios al Código Civil*, p. 74.

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Alzua *v.* Johnson (1912) 21 Phil. 308.

U. S. *v.* De Guzman (1915) XIII O. G. 1173.

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APPENDIX

PHILIPPINE AUTONOMY ACT—ACT OF CONGRESS OF AUGUST 29, 1916.

(PUBLIC—No. 240—64TH CONGRESS.)

[S. 381]

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.

Whereas it was never the intention of the people of the United States in the incipiency 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 to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act and the name "The Philippines" as used in this Act shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the eleventh day of April,

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eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the seventh day of November, nineteen hundred.

§ 2. That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: *Provided,* That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.

§ 3. That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal

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offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor-General, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted nor shall the law of primogeniture ever be in force in the Philippines.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said islands shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign State.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That slavery shall not exist in said islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted. That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

That no law shall be made respecting an establishment

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of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such. Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said islands shall be uniform.

That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only.

§ 4. That all expenses that may be incurred on account of the Government of the Philippines for salaries of officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the islands, not, however, including defenses, barracks, and other works undertaken by the United States shall, except as

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otherwise specifically provided by the Congress, be paid by the Government of the Philippines.

§ 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.

§ 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.

§ 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

§ 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

§ 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed

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under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine Legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: *Provided,* That upon the approval of such an act by the Governor-General, it shall be by him forthwith transmitted to the President of the United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: *Provided further,* That where lands in the Philippine Islands have been or may be reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said islands.

§ 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: *Provided*, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines be-

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come a law until it has been approved by the President of the United States: *Provided further,* That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved.

§ 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit: *Provided, however,* That the entire indebtedness of the Philippine government created by the authority conferred herein shall not exceed at any one time the sum of $15,000,000, exclusive of those obligations known as friar land bonds, nor that of any Province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time.

§ 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature:" *Provided,* That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive

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jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature.

§ 13. That the members of the senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election.

§ 14. That the members of the house of representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the house of representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election: *Provided,* That the members of the present assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the house of representatives from their

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respective districts for the term expiring in nineteen hundred and nineteen.

§ 15. That at the first election held pursuant to this act, the qualified electors shall be those having the qualifications of voters under the present law; thereafter and until otherwise provided by the Philippine Legislature herein provided for the qualifications of voters for senators and representatives in the Philippines and all officers elected by the people shall be as follows:

Every male person who is not a citizen or subject of a foreign power twenty-one years of age or over (except insane and feeble-minded persons and those convicted in a court of competent jurisdiction of an infamous offense since the thirteenth day of August, eighteen hundred and ninety-eight), who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting, and who is comprised within one of the following classes:

(a) Those who under existing law are legal voters and have exercised the right of suffrage.

(b) Those who own real property to the value of 500 pesos, or who annually pay 30 pesos or more of the established taxes.

(c) Those who are able to read and write either Spanish, English, or a native language.

§ 16. That the Philippine Islands shall be divided into twelve senate districts, as follows:

First district: Batanes, Cagayan, Isabela, Ilocos Norte, and Ilocos Sur.

Second district: La Union, Pangasinan, and Zambales.

Third district: Tarlac, Nueva Ecija, Pampanga, and Bulacan.

Fourth district: Bataan, Rizal, Manila, and Laguna.

Fifth district: Batangas, Mindoro, Tayabas, and Cavite.

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Sixth district: Sorsogon, Albay, and Ambos Camarines.

Seventh district: Iloilo and Capiz.

Eighth district: Negros Occidental, Negros Oriental, Antique, and Palawan.

Ninth district: Leyte and Samar.

Tenth district: Cebu.

Eleventh district: Surigao, Misamis, and Bohol.

Twelfth district: The Mountain Province, Baguio, Neuva Vizcaya, and the Department of Mindanao and Sulu.

The representative districts shall be the eighty-one now provided by law, and three in the Mountain Province, one in Nueva Vizcaya, and five in the Department of Mindanao and Sulu.

The first election under the provisions of this Act shall be held on the first Tuesday of October, nineteen hundred and sixteen, unless the Governor-General in his discretion shall fix another date not earlier than thirty nor later than sixty days after the passage of this Act: *Provided,* That the Governor-General's proclamation shall be published at least thirty days prior to the date fixed for the election, and there shall be chosen at such election one senator from each senate district for a term of three years and one for six years. Thereafter one senator from each district shall be elected from each senate district for a term of six years: *Provided,* That the Governor-General of the Philippine Islands shall appoint, without the consent of the senate and without restriction as to residence, senators and representatives who will, in his opinion, best represent the senate district and those representative districts which may be included in the territory not now represented in the Philippine Assembly: *Provided further,* That thereafter elections shall be held only on such days and under such regulations as to ballots, voting, and qualifications of electors as may be prescribed by the Philippine Legislature, to which is hereby given authority

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to redistrict the Philippine Islands and modify, amend, or repeal any provision of this section, except such as refer to appointive senators and representatives.

§ 17. That the terms of office of elective senators and representatives shall be six and three years, respectively, and shall begin on the date of their election. In case of vacancy among the elective members of the senate or in the house of representatives, special elections may be held in the districts wherein such vacancy occurred under such regulations as may be prescribed by law, but senators or representatives elected in such cases shall hold office only for the unexpired portion of the term wherein the vacancy occurred. Senators and representatives appointed by the Governor-General shall hold office until removed by the Governor-General.

§ 18. That the senate and house of representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, and each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member. Both houses shall convene at the capital on the sixteenth day of October next following the election and organize by the election of a speaker or a presiding officer, a clerk, and a sergeant at arms for each house, and such other officers and assistants as may be required. A majority of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. The legislature shall hold annual sessions, commencing on the sixteenth day of October, or, if the sixteenth day of October be a legal holiday, then on the first day following which is not a legal holiday, in each year. The legislature may be called in special session at any time by the Governor-General for general legislation, or for action on such specific subjects as he may designate. No special

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session shall continue longer than thirty days, and no regular session shall continue longer than one hundred days, exclusive of Sundays. The legislature is hereby given the power and authority to change the date of the commencement of its annual sessions.

The senators and representatives shall receive an annual compensation for their services, to be ascertained by law, and paid out of the treasury of the Philippine Islands. The senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term.

§ 19. That each house of the legislature shall keep a journal of its proceedings and, from time to time, publish the same; and the yeas and nays of the members of either house, on any question, shall, upon demand of one-fifth of those present, be entered on the journal, and every bill and joint resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor-General. If he approve the same, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected

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to that house it shall be sent to the Governor-General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor-General, so stating, and it shall not become a law: *Provided,* That if any bill or joint resolution shall not be returned by the Governor-General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor-General within thirty days after adjournment: *Provided further,* That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for his approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The items or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

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. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the sev-

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eral sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid.

§ 20. That at the first meeting of the Philippine Legislature created by this Act and triennially thereafter there shall be chosen by the legislature two Resident Commissioners to the United States who shall hold their office for a term of three years beginning with the fourth day of March following their election, and who shall be entitled to an official recognition as such by all departments upon presentation to the President of a certificate of election by the Governor-General of said islands. Each of said Resident Commissioners shall, in addition to the salary and the sum in lieu of mileage now allowed by law, be allowed the same sum for stationery and for the pay of necessary clerk hire as is now allowed to the Members of the House of Representatives of the United States, to be paid out of the Treasury of the United States, and the franking privilege allowed by law to Members of Congress. No person shall be eligible to election as Resident Commissioner who is not a bona fide elector of said islands and who does not owe allegiance to the United States and who is not more than thirty years of age and who does not read and write the English language. The present two Resident Commissioners shall hold office until the fourth of March, nineteen hundred and seventeen. In case of vacancy in the position of Resident Commissioner caused by resignation or otherwise, the Governor-General may make temporary appointments until the next meeting of the Philippine Legislature, which shall then fill such vacancy; but the Resident Commissioner thus

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elected shall hold office only for the unexpired portion of the term wherein the vacancy occurred.

§ 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor-General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor-General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval

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forces of the United States in the islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided,* That whenever the Governor-General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor-General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President.

§ 22. That, except as provided otherwise in this Act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided,* That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names

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and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor-General: *Provided,* That all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General. There is hereby established a bureau, to be known as the Bureau of Non-Christian tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor-General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives.

§ 23. That there shall be appointed by the President, by and with the advice and consent of the Senate of the United States, a vice governor of the Philippine Islands, who shall have all of the powers of the Governor-General in the case of a vacancy or temporary removal, resignation, or disability of the Governor-General, or in case of his temporary absence; and the said vice governor shall be the head of the executive department, known as the department of public instruction, which shall include the bureau of education and the bureau of health, and he may be assigned such other executive duties as the Governor-General may designate.

Other bureaus now included in the department of public instruction shall, until otherwise provided by the Philippine Legislature, be included in the department of the interior.

The President may designate the head of an executive department of the Philippine government to act as Governor-General in the case of a vacancy, the temporary removal, resignation, or disability of the Governor-General and the vice governor, or their temporary absence, and the head of the department thus designated shall exercise

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all the powers and perform all the duties of the Governor-General during such vacancy, disability, or absence.

§ 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

There shall be a deputy auditor appointed in the same manner as the auditor. The deputy auditor shall sign such official papers as the auditor may designate and perform such other duties as the auditor may prescribe, and in case of the death, resignation, sickness, or other absence of the auditor from his office, from any cause, the deputy auditor shall have charge of such office. In case of the absence from duty, from any cause, or both the auditor and the deputy auditor, the Governor-General may designate an assistant, who shall have charge of the office.

The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. With the approval of the Governor-General he shall from time to time make and promulgate general or special rules and regulations not inconsistent with law covering the method

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of accounting for public funds and property, and funds and property held in trust by the government or any of its branches: *Provided,* That any officer accountable for public funds or property may require such additional reports or returns from his subordinates or others as he may deem necessary for his own information and protection.

The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office.

As soon after the close of each fiscal year as the accounts of said year may be examined and adjusted the auditor shall submit to the Governor-General and the Secretary of War an annual report of the fiscal concerns of the government, showing the receipts and disbursements of the various departments and bureaus of the government and of the various Provinces and municipalities, and make such other reports as may be required of him by the Governor-General or the Secretary of War.

In the execution of their duties the auditor and the deputy auditor are authorized to summon witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions, may issue subpoenas and enforce the attendance of witnesses, as now provided by law.

The office of the auditor shall be under the general supervision of the Governor-General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law.

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§ 25. That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor-General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

If the Governor-General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor-General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive.

§ 26. That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Governor-General, by and with the advice and consent of the Philippine Senate: *Provided,* That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by Act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination.

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§ 27. That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds $25,000, or in which the title or possession of real estate exceeding in value the sum of $25,000, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved within the same time, in the same manner, under the same regulations, and by the same procedure, as far applicable, as the final judgments and decrees of the district courts of the United States.

§ 28. That the government of the Philippine Islands may grant franchises and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said Provinces or municipalities: *Provided,* That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary

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purposes for which the franchise is granted, and that no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States, and that lands or right of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of franchises and rights under which they were granted or upon their revocation or repeal. That all franchises or rights granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the Province or municipality within which such franchises are granted and exercised: *Provided further,* That it shall be unlawful for any corporation organized under this Act, or for any person, company, or corporation receiving any grant, franchise, or concession from the government of said islands, to use, employ, or contract for the labor of persons held in involuntary servitude; and any person, company, or corporation so violating the provisions of this Act shall forfeit all charters, grants, or franchises for doing business in said islands, in an action or proceeding brought for that purpose in any court of competent jurisdiction by any officer of the Philippine government, or on the complaint of any citizen of the Philippines, under such regulations and rules as the Philippine Legislature shall prescribe, and in addition shall be deemed guilty of an offense, and shall be punished by a fine of not more than $10,000.

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§ 29. That, except as in this Act otherwise provided, the salaries of all the officials of the Philippines not appointed by the President, including deputies, assistants, and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine Legislature; and if the legislature shall fail to make an appropriation for such salaries, the salaries so fixed shall be paid without the necessity of further appropriations therefor. The salaries of all officers and all expenses of the offices of the various officials of the Philippines appointed as herein provided by the President shall also be paid out of the revenues of the Philippines. The annual salaries of the following-named officials appointed by the President and so to be paid shall be: The Governor-General, $18,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of the Philippines, with the furniture and effects therein, free of rental; vice governor, $10,000; chief justice of the supreme court, $8,000; associate justices of the supreme court, $7,500 each; auditor, $6,000; deputy auditor, $3,000.

§ 30. That the provisions of the foregoing section shall not apply to provincial and municipal officials; their salaries and the compensation of their deputies, assistants, and other help, as well as all other expenses incurred by the Provinces and municipalities, shall be paid out of the provincial and municipal revenues in such manner as the Philippine Legislature shall provide.

§ 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect.

Approved, August 29, 1916.

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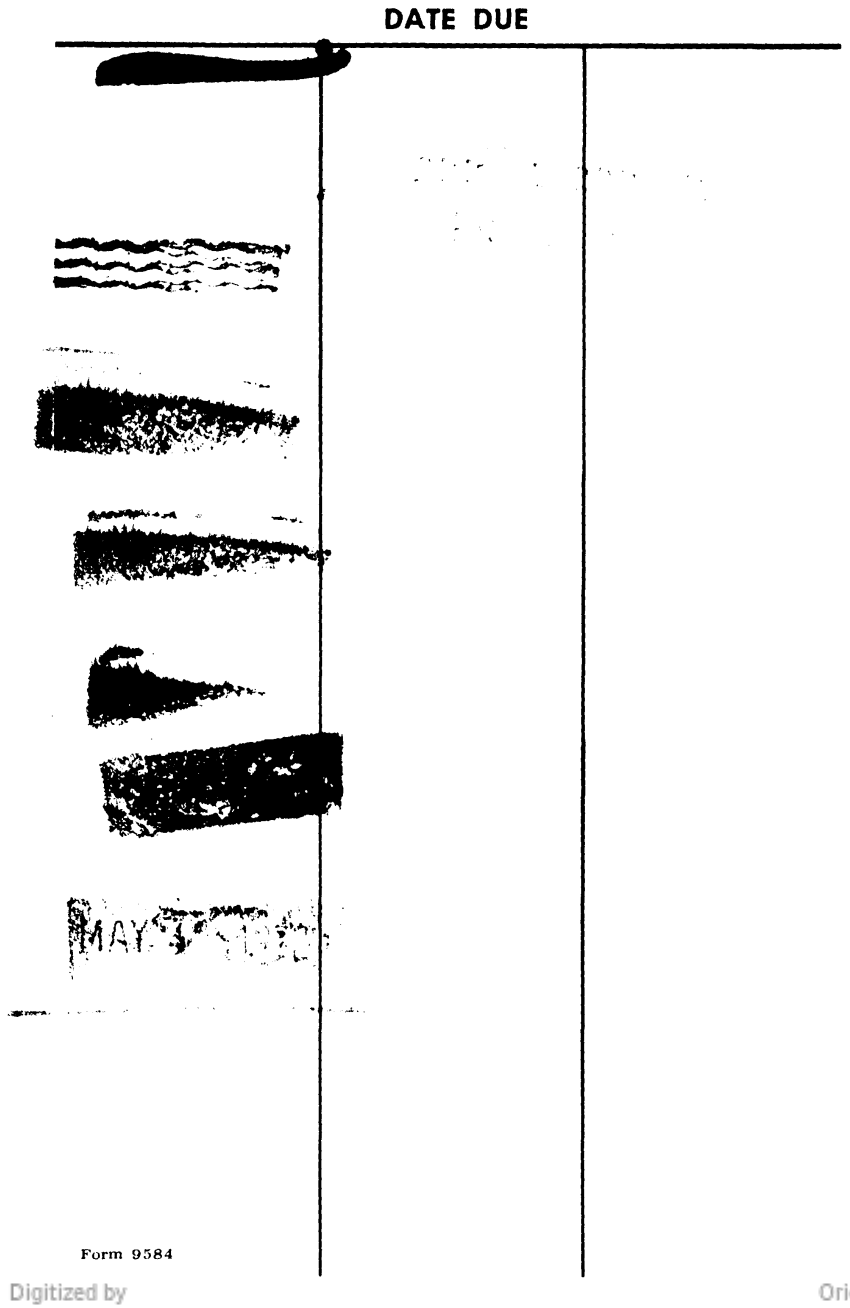

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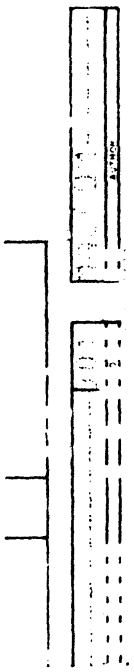

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