LATIN HUMANISM IN THE LEGAL SYSTEM OF THE PHILIPPINES *

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I. INTRODUCTION

The word "humanism" has been freely applied to a variety of beliefs, methods, and philosophies that place central emphasis on the human realm. Most frequently, however, the term is used with reference to a system of education and mode of inquiry that developed in northern Italy during the fourteenth century and later spread through Europe and England. Alternately known as "Renaissance humanism," this program was so broadly and profoundly influential that it is one of the chief reasons why the Renaissance is viewed as a distinct historical period. Indeed, though the word Renaissance is of more recent coinage, the fundamental idea of that period as one of renewal and reawakening is humanistic in origin.

The history of the term "humanism" is complex but enlightening. It was first employed (as *humanismus*) by nineteenth century German scholars to designate the Renaissance emphasis on classical studies in education. These studies were pursued and endorsed by educators known, as early as the late fifteenth century, as *umanisti*, that is, professors or students of classical literature. The word *umanisti* derives from the *studia humanitatis*, a course of classical studies that, in the early fifteenth century, consisted of grammar, poetry, rhetoric, history, and moral philosophy. The *studia humanitatis* were held to be the equivalent of the Greek *paideia*. Their name was itself based on the Latin *humanitas*, an educational and political idea that was the intellectual basis of the entire movement. Renaissance humanism in all its forms defined

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itself in its straining toward this ideal. No discussion, therefore, of humanism can have validity without an understanding of humanitas.

Humanitas meant the development of human virtue, in all its forms, to its fullest extent. The term thus implied not only such qualities as are associated with the modern word **humanity** — understanding, benevolence, compassion, mercy — but also more aggressive characteristics such as fortitude, judgment, prudence, eloquence, and even love of honor. In short, humanism called for the comprehensive reform of culture, the transfiguration of what humanists termed the passive and ignorant society of the "dark" ages into a new order that would reflect and encourage the grandest human potentialities. Humanism had an evangelical dimension. It sought to project *humanitas* from the individual into the state at large.

The wellspring of *humanitas* was classical literature. Greek and Roman thought, available in a flood of rediscovered or newly translated manuscripts, provided humanism with much of its basic structure and method.[1]

In the context of this paper, the term "humanism" refers to the study of the human spirit, in this instance, as it has revealed itself in man's specific human activities which are governed by rules of conduct or norms which we call "law." Thus, we find its immediate value in the enlightenment, the enrichment and the guidance of the human person which must, for their ultimate valuation, depend on a judgment of the value and destiny of the human personality itself. The ends of life in the humanistic sense may be categorized in the following manner:

> material ends such as freedom or security from want or fear; social ends, the unification and cooperation of all members of society in achieving peace, order and justice; intellectual and aesthetic ends; the dignity of man's unique position as a rational creature demands that he understands the universe in which he lives, as well as the nature, history and origin of his own kind . . . .[2]

The scope of this paper will, therefore, be the Latin legacy in the Philippine legal system as handed down from the Code Napoleon and the Roman law conducing to the enlightenment, the enrichment and the guidance

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[1] 20 ENCYCLOPEDIA BRITANICA 665 (1992).

[2] Rev. James F. Donelan, *Humanism and Law*, 40 PHIL. L.J. 620, 626 (1965).

of the human person. This must, however, be qualified, if the study is to be focused on the Christian humanist, by the tenet that "the ideal Christian man is one who develops the image of God within him to its fullest possible degree."[3]

II. THE SPANISH OCCUPATION

It has been said that before the coming of Spain to the Philippine Islands in 1521, the country was nothing but a cluster of islands. To be sure, some of them were much larger than those that dotted the Pacific Ocean and the China Sea, such as Luzon, Cebu, Negros and Mindanao. Still, such an assessment bespeaks but a distorted geographical fact.

What of the people whom the Spaniards subjugated by force of arms? Basically, the inhabitants were Malays but the legacy and influence of racial strains from far-away lands were unmistakable: the Chinese, the Indian, the Arabic, the Mexican, the Hispanic and the North American.

They were an amalgam of races which exhibited the streams of culture that left their indelible imprint on the indigenous natives. These were to be found in the language, customs, mores and folklore, art and what passed for law with its sanctions recognized as binding on everyone.

The concern of this paper, the Latin influence on the legal system of the Philippines, found its way to the Philippines when the Spaniards, after conquering the country with the sword and the cross, set out to impose their laws on the subject peoples.

A. The Roman Law

Of the two great legal systems that have influenced the jurisprudence of the world, it is the Roman law that had early exercised its influence on the Philippines upon the conquest of the country by the Spaniards. According to Lee, as cited in Gamboa,

> the excellence of the Roman law and the supremacy that it holds among all the legal systems of the world, past and present, are due partly to the genius of the Latin race and partly to the extraordinarily favorable position which they occupied in relation to the rest of the world. The

[3] *Id.* at 627.

> Romans had a natural gift for the development of the science of jurisprudence. And they were so situated that they could draw from the highest western civilization the best that this had to offer. Phoenicia, Babylon, Egypt and Greece were all within their easy reach. The Romans took advantage of every good thing that they found among these peoples which would contribute to the growth of their jurisprudence.[4]

> The history of Spanish law may be divided into the following: First was the ante-Justinian Roman law period; second was the period of the introduction of Justinian Roman law into Spain as a result of the Bologna revival; third was the period of partial codification; and fourth, that of complete codification.[5]

In 1530, a Royal Decree was passed which declared that existing and future laws of Castile and of the city of Toro were also applicable in the Philippines as a subsidiary source of law for matters not covered by specific colonial legislation. It was at the time when Spain was undergoing the period of partial codification in the sixteenth century under Philip II that compilations of the different laws of the various Spanish states were extended to the Philippines. Hence, there were such laws as the *Nueva Recopilación* promulgated in 1657; the *Recopilación de Las Leyes de las Indias* of 1680 which included all the laws then enforced in the colonies of Spain; and, finally, the *Novisima Recopilación* promulgated in 1805 by Charles V. This took precedence over all the other codified laws until the era of the modern codes was ushered in. It was in 1811 that the *Cortés* of Cadiz passed a resolution providing for the codification as soon as practicable of all the important branches of Spanish laws.[6]

To illustrate, however, how the oppressive laws of the *Recopilación* of 1618 still dominated the lives of the Filipinos during the nineteenth century and kept them in physical and mental bondage, here are a few examples:

> Ley 18, Titulo 3, Libro VI of the Recopilación, promulgated in 1618, provided that the natives were not to be allowed to move from one pueblo to another. Ley 19 provided that no natives were to be permitted to reside outside their reducciones. These laws were only little relaxed over the centuries. The men of Iloilo who worked as sacadas in the Negro sugar plantations since the 1860s had to secure short-term work

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[4] MELQUIADES GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW 63 (1955), citing LEE, HISTORICAL JURISPRUDENCE.

[5] GAMBOA, *supra* note 4, at 80.

[6] *Id.* at 82.

> permits and arrangements had to be made for the advance payment of their tributes and fallas.
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> The laws of Libro I, Titulo 24 sought to prevent the people in the colonies, Spaniards as well as natives, from receiving new ideas. No books dealing with the Indies and their peoples could be printed and sold in the colonies without a special permit from the Council of the Indies (1560). Nor could any book be introduced into the colonies without the Council's permission. Ships arriving in all ports had to be searched by the church prelates and the royal officials for banned books. It was the duty of all colonial officials to seize all books that were on the Index of the Holy Inquisition (1556). In addition to these laws there were others prohibiting Spaniards from residing in the native pueblos, and forbidding entry into the colonies by all persons, Spaniards or not, without royal license. Ship captains were liable for any violations.
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> Regulations to implement the censorship laws were issued from time to time. The royal order of 19 May 1801 established a state censor of books and newspapers in each of the colonies; he was also responsible for inspecting printing presses. The censor in Manila was charged with the strict review and examination of all manuscripts before any could be printed and distributed. This was to guard against all propositions and ideas that were forbidden in the universities, convents, and schools. Specific rules in the cédula required the censor to condemn: all propositions against the civil and ecclesiastical systems; all propositions against the pontifical bulls and royal decrees dealing with the doctrines of the Immaculate Conception; all views and discussions in favor of tyrannicide or regicide; and "all similar ideas of lax and pernicious morality." The daily newspaper *Diario de Manila*, for example, had to be printed in the afternoon before the day of its publication (1850s) in order to accommodate the censor.[7]

The modern codes which soon supplanted the Justinian Roman law constitute the modern Civil Law and the Romanesque legal system. It is said that the best known of these modern codes is the Code Napoleon. It was Napoleon's pride, even more than his military victories. As he said during the darkest period of his life when he was a prisoner at St. Helena, "[m]y glory is not to have won forty battles, for Waterloo's defeat will destroy the memory of as many victories; but what nothing will destroy, what will live eternally is my Civil Code."

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[7] I O.D. CORPUZ, THE ROOTS OF THE FILIPINO NATION 467-68 (1989).

> Indeed, this French Civil Code spread in practically all European countries: Italy, Spain, Portugal, France, Switzerland, Germany, Holland, and Belgium. Through Spain and Portugal it was extended to Mexico, Central America, South America, Cuba, Puerto Rico, and the Philippines. From France and Holland it passed to Quebec in Canada, Louisiana in the United States, Ceylon, Mauritius, British Guiana, South Africa, French Africa, and the Dutch and the French East Indies. Its influence spread to Scotland and to such outlying regions as Greece, Serbia, Bulgaria, Rumania, Russia, Poland, Scandinavia, and Japan.[8]

The Code Napoleon became the model of the Louisiana Civil Code of 1870 which, in turn, was a source of the present Civil Code of the Philippines.

At this juncture, it must be stated that one of the major contributions to the science of law by Roman law is its system of classification. It was the basis of the Gauian order, followed by Blackstone for the arrangement of his famous commentaries, by the Justinian Codes, the Code Napoleon and all the codes modeled after it. It is no wonder that the Code Napoleon, the model of our own Civil Code, has been recognized as an "incomparable monument, a masterpiece of logical arrangement and jurisprudential unity and clarity."[9]

In truth, even the common law of England and later of the United States and the Mohammedan legal system, as well as the Ecclesiastical or Canon Law also borrowed much from Roman law. Hence, the Latin Humanist strain is quite evident today even in their more modern garb.

B. The Spanish Civil Code of 1889

In May 1889, the Civil Code was promulgated in Spain. In July of the same year, by Royal Decree, it was extended to the Philippines. The Code was published in the Manila Gazette and took effect as a law on 8 December 1889. Prior to its enactment, the civil law of the Philippines, as in Spain, was found principally in the *Novisima Recopilación*, the *Siete Partidas*, the Laws of Toro, and such special statutes of the Spanish *Cortés* as the Crown had made applicable here.

The principal change in the Insular law which was made by the extension of the Civil Code to the Philippines was the establishment, for the

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[8] JUAN F. RIVERA, THE FATHER OF THE FIRST BROWN RACE CIVIL CODE 24 (1978).
[9] *Id.* at 25.

first time in the history of the country under the Spanish regime, of the civil marriage. Earlier, only the canonical marriage sanctioned by the Catholic Church had legal validity. The Code authorized municipal judges to perform the marriage ceremony for persons not professing the Catholic faith. It also liberalized the divorce law, by recognizing several grounds for a judicial decree of separation in addition to the only one — infidelity — existing in the old law.

These reforms were of short duration. On 31 December 1889, Governor-General Weyler published in the Manila Gazette an order suspending in the Archipelago Titles 4 and 12 of the Civil Code — the titles of Book One containing the innovations relating to marriage, divorce, and the Civil Registry.

The change of sovereignty and the consequent establishment of religious liberty made a modification of the marriage law imperative. Accordingly, in December 1899, the Military Governor, exercising the legislative authority then vested in him under the war power, promulgated a Marriage Law, designated as General Orders No. 68, which, as amended by General Orders No. 70, was then still in force. Under their provisions, civil and canonical marriages were given equal validity.

Shortly after legislative authority was transferred from the governor-general to the Philippine Commission, this body enacted a Code of Civil Procedure.[10] While purporting and professing to be merely procedural, this Code repealed by implication an appreciable part of the Civil Code. The Code of Civil Procedure repealed by implication the Civil Code, the Commercial Code, the Mortgage Law, and other substantive local laws. The principal changes were wrought with regard to wills, the rights and liabilities of heirs and devisees, guardianship, and the rights of parents with respect to the property of their children.

Other statutes enacted by the Philippine Legislature affected the Civil Code more or less profoundly. The Land Registration Act,[11] the Chattel Mortgage Law,[12] the Insolvency Law,[13] the Negotiable Instruments Law,[14] the Usury Law,[15] and the Divorce Law,[16] are among the most important of these.

[10] Act 190 (1901).
[11] Act 496 (1902).
[12] Act 1508 (1906).
[13] Act 1956 (1909).
[14] Act 2031 (1911).
[15] Act 2073 (1911).

> Notwithstanding the numerous innovations produced, through chance and design, by subsequent enactments, the Civil Code was essentially the fundamental law governing the acquisition, conveyance, and transmission of property, the incidents of its ownership, and the creation and extinction of contractual and extra-contractual obligations.[17]

III. THE AMERICAN REGIME

Upon the establishment of the American regime in 1898, a crucial political decision had to be made: whether the American common law would be transplanted to the new colony or whether the prevailing Spanish laws should be retained. It was decided that those Spanish laws which were political in nature, that is, dealing with the relationship of the people to the government, were to be abrogated. On the other hand, the laws affecting private rights and regulating local institutions, as well as the penal laws, were to continue in force.

When the Americans decided to allow the private law of the newly-occupied territory to remain, it indubitably took a leaf from the Louisiana experience. When the Louisiana territory was acquired by the United States in 1803, this territory was a Spanish colony. The Spanish laws at the time were found scattered here and there among the old Spanish compilations and Royal *Cédulas*. Of course, it should not be forgotten that much earlier, as a French settlement, the laws and ordinances of France and the customs of Paris had been extended to it. However, at bottom, the law of France and the law of Spain were almost similar when applied to colonial territories. Prudently, the United States did not attempt to abrogate the private law of Spain in civil matters because it had become extensively interwoven with the social life of the people. As long as there was no conflict between those and the Constitution of the United States or the fundamental principles of legal rights of the American people, the Americans left the law unaltered. Changes were principally made in the areas of commercial law, industrial relations, insolvency and negotiable instruments and equity.

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[16] Act 2710 (1917).

[17] *Preface to the Fourth Edition of* THE CIVIL CODE OF SPAIN WITH PHILIPPINE NOTES AND REFERENCES x (F. C. Fisher ed. and trans., 1930).

It will be recalled that with respect to the conquest of the Philippines by the Americans, President McKinley, in his instructions to the Taft Commission, said 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 on procedure and in the criminal laws to secure speedy and impartial trials and, at the same time, effective administration and respect for individual right.[18]

Gamboa made this assessment about the character of Philippine law at the time:

> First, the greater bulk of Philippine private, substantive law is Romanesque.
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> Second, there has been an increasing infiltration of common-law principles into Philippine jurisprudence, due to several causes, to wit:
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> (a) the automatic substitution of the Spanish political law by the American political law, upon the transfer of sovereignty;
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> (b) the continued drawing from American patterns by the Philippine Legislature in the enactment of new statutes;
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> (c) the growing reliance by the bar and the bench on American decisions in the application and interpretation, not only of American-derived statutes, but also of the old statutes of Spanish origin;
>
> (d) the imitation of the system of American legal education by the law schools of the Philippines. It must be remembered that the revival of Justinian Roman law in all Europe in the twelfth century was largely due to the lectures of one law professor at the University of Bologna.
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> Third, despite the rapid increase of the common-law element to predominate. It is too sturdy to be relegated to the background. "Law is a tenacious plant," says Lord Bryce, "even harder to extirpate than language."[19]

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[18] Jose P. Laurel, *What Lessons May Be Derived by the Philippine Islands from the Legal History of Louisiana*, 2 PHIL. L.J. 63, 93 (1915). This paper won a prize for best thesis from the Lawyers' Cooperative Publishing Co.

[19] GAMBOA, *supra* note 4, at 90.

IV. THE CIVIL CODE OF 1950

On 20 March 1947, then President Manuel A. Roxas created a Code Commission under Executive Order No. 48, tasked to revise the Spanish Civil Code which had become anachronistic in parts. The objective was to introduce amendments that would be more reflective of the customs and traditions, even idiosyncracies, of the Filipino people, as well as to incorporate certain common law principles undergirding some American laws that were in force at the onset of the American regime. Appointed Chairman of the Commission was Dr. Jorge Cleofas Bocobo, an internationally recognized Filipino authority on civil law. His members were other eminent civilists, Judge Guillermo D. Guevarra, Dean Pedro Y. Ylagan and Dean Francisco R. Capistrano. The fourth member, Dr. Arturo M. Tolentino, was appointed on 28 February 1948 but resigned in 1949 due to his election as member of the House of Representatives.

The "new Civil Code" was approved in 1949. Following the structural division of its Roman prototypes, it was composed of four books, namely: Book 1 - Persons; Book 2 - Property, Ownership and its Modifications; Book 3 - Different Modes of Acquiring Ownership, and Book 4 - Obligations and Contracts. Quite notable were distinct improvements over the Spanish model, especially on the observance of ethical standards, good faith and social justice, strengthening the family as an institution and improving the position of the wife within the marriage, all of which contain the seeds of Latin humanism.

While the basis of the new Civil Code was the Spanish Civil Code of 1889, about forty-three percent had been adapted from France, Argentina, Mexico, Louisiana, California, Switzerland and other countries.

The Roxas Code Commission justified the adoption of provisions and precepts from other countries on these grounds:

> 1. The Philippines, by its contact with Western culture for the last four centuries, is a rightful beneficiary of the Roman Law, which is a common heritage of civilization. For many generations that legal system as developed in Spain has been the chief regulator of the juridical relations among Filipinos. It is but natural and fitting, therefore, that when the young Republic of the Philippines frames its new Civil Code, the main inspiration should be the Roman law as unfolded and adapted in Spain, France, Argentina, Germany and other civil law countries . . .

> 2. The concepts of right and wrong are essentially the same throughout the civilized world. Provided the codifier exercises prudence in selection and bears in mind the peculiar conditions of his own country, he may safely draw rules from codes and legal doctrines of other nations.[20]

A. Latin humanist concepts

It will be noted that some policy guidelines and fundamental principles form part of the introductory provisions of the Civil Code of 1950. Dr. Bocobo, observing that one of the capital defects of the Spanish Civil Code was its too rigid adherence to legalism and formality, laid down, as a basic reform of the Civil Code they were drafting, the supremacy of justice over legalism. For instance, chapter 2 is devoted to human relations. He explained that some basic principles have to be observed for the rightful relationship among human beings and for the stability of the social order. These norms that spring from the fountain of good conscience will serve as guides for human conduct and should run as golden threads through society to the end that law may approach its supreme ideal in the sway and dominance of justice.

What is now article 19 provides: "Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith." A basic rule of human conduct which reflects Latin humanism, it is essentially a moral precept found in the Institutes of Justinian, thus: To live honestly, to hurt no one, to give everyone his due.

Article 10 provides that "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." In other words, the letter of the law should not prevail over the spirit, because as the Bible says, "The letter killeth but the spirit giveth life." As Dr. Bocobo stated:

> There is a foundation of righteousness in the article because it would be unfair and extraordinary, to say the least, to impute to the lawmaking body any desire to establish or sustain wrong over right, instead of justice over injustice. The provision is, therefore, meant to suppress and confute all attempts to distort justice by a subtle or unprincipled construction or application of laws. It is, indeed, unfortunate that in many a lawsuit,

[20] RIVERA, *supra* note 8, at 35-36.

> because one of the parties has an abler lawyer, that party wins the case though he may sustain the wrong side.[21]

An ancient principle of the Roman Law is that no one should unjustly enrich himself at the expense of another. Hence, although not in the Spanish Civil Code, this 1950 Civil Code provided in its article 22:

> Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Called quasi-contract, the principle is still embodied in the present Civil Code, the prime examples of unjust enrichment being *solutio indebiti* which is the payment of a debt not due and *negotiorum gestio*, the voluntary management of the business or property of another without authority from the latter.

Then there is that ancient institution called "natural obligation" found in the codes of France, Italy, Germany, Louisiana and Argentina, among others. The 1950 Civil Code embodied this idea of natural obligations in its article 1423 which reads:

> Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof.

A new type of civil action springs from "quasi-delicts" or the Spanish *culpa extra-contractual*, embodied thus in article 2176:

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

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[21] *Id.* at 54.

Different from the American tort, it excludes cases in which the defendant acted with malice, whereas this action is based on fault or negligence, there being no pre-existing contractual relationship between the parties.

Likewise, article 33 allows an independent civil action in cases of defamation, fraud and physical injuries, thus:

> In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In its report, the Code Commission justified this independent civil action thus:

> Under the new Civil Code, following the new American theory of torts, these actions are independent from any criminal liability or prosecution. It is also to be noted that these torts require only a preponderance of evidence. This is fair, because what is sought is not punishment, such as imprisonment, but only civil indemnity, and, therefore, there need not be any proof beyond reasonable doubt. Besides, the injured party in these civil cases is not the State but a private individual, and, inasmuch as he is the one who has personally and directly suffered, he should have an independent civil action regardless of whether or not the prosecuting attorney has initiated a criminal prosecution. Such a relationship between civil and criminal actions seems strange, and perhaps shocking, to many a Filipino legal mind, but, I believe, that for the sake of an effective vindication of private rights, the introduction of American tort is just and proper and will enrich the Philippine legal system. It is not in conformity with justice that private wrongs committed against an individual should not be repaired, simply because the prosecuting attorney refuses to bring a criminal action or fails to prove the crime beyond reasonable doubt. In other words, the repairing of injury, personally suffered by an individual, should not depend upon a public action designed for punishment, such as imprisonment.[22]

[22] *Id.* at 186-87.

B. Family relations

1. Customs and traditions

The Civil Code acknowledges the importance of customs and traditions in the interpretation and enforcement of Philippine laws. However, it also provides that those customs which are contrary to law, public policy, and public order will not be countenanced.[23] A custom must be proved as a fact, according to the rules of evidence, otherwise the custom cannot be considered as a source of right.[24]

Examples abound in jurisprudence. An early case "involving the transfer of the ownership of improvements was held to be neither a mortgage, antichresis, or purchase on condition of redemption, as it did not fall under any of the contracts for security in the Civil Code."[25] The Supreme Court held that ownership of the improvements could not be transferred without transferring ownership of the land itself — prevailing customs notwithstanding. An Igorot custom of adoption without legal formalities was held to be contrary to law, not to be countenanced or invoked.[26]

Duly proven, however, custom can be the source of quasi-delicts. A taxi company was held negligent for not barring its drivers from crossing railroad tracks without ascertaining beforehand if a train is approaching, as was the drivers' custom.[27]

2. Marriage

Spanish law recognized only canonical marriages or marriages where the requisites, form and solemnities for celebration were governed by the rules of the Catholic Church. This kind of marriage, however, produced all the civil effects with respect to the persons and property of the spouses and their descendants.

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[23] CIVIL CODE, art. 11.
[24] CIVIL CODE, art. 12; Patriarca v. Orate, 7 Phil. 390, 395 (1907).
[25] Patriarca v. Orate, 7 Phil. 390, 394–95 (1907).
[26] Lubos v. Mendoza, 40 O.G. 553 (1941).
[27] Yamada v. Manila Railroad Co., 33 Phil. 8, 26 (1915).

Civil marriages, that is, those solemnized by government functionaries authorized by law where the legal requisites are complied with, were introduced by the Americans in 1889.

Article 62 provided that parental advice is needed for marriage if the boy is above twenty but below twenty-five and the girl is above eighteen but below twenty-three. The Family Code[28] has amended this article by requiring parental advice for any of the contracting parties if they are between the ages twenty-one and twenty-five. The effect of lack of parental advice or unfavorable parental advice is that the marriage license will not be issued until three months thereafter. This is in keeping with the Philippine tradition of honoring one's parents by seeking their guidance and informing them of the impending marriage.

The Family Code has amended many of the provisions of the Civil Code concerning marriage, matrimonial property law, paternity, filiation and parental authority with a view to upgrading the status of women.

3. Spanish concepts in inheritance and succession

Generally, there are three principal systems of distribution of hereditary property:

> (1) the system of absolute freedom of disposition followed in England, Canada and the U.S.;
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> (2) the system of total reservation wherein the testator cannot freely dispose of any part of the inheritance, which by force of law goes to certain legal heirs, except if those legal heirs are absent; and
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> (3) the system of partial reservation, which divides the inheritance into the free portion and the legitime. This system is what is followed in the Philippines.[29]

When the Civil Code of 1950 came into effect, the system of legitimes was preserved, taking into consideration the customs and traditions of the Filipino people and for the sake of family solidarity.

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[28] FAMILY CODE, art. 15.

[29] III ARTURO TOLENTINO, COMMENTARIES ON THE CIVIL CODE OF THE PHILIPPINES 248 (6th ed. 1996).

Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs, called compulsory heirs. The system of legitime is a limitation upon the freedom of the testator to dispose of his property. Its purpose is to protect those heirs, for whom the testator is presumed to have an obligation to reserve certain portions of his estate, from his unjust ire, weakness or thoughtlessness.[30] Thus, the testator cannot impose any lien, substitution or condition on the legitime of his spouse.[31] A testator may dispose of the free portion of his estate as long as it does not impair the legitime of the compulsory heirs, who are the following:

> (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
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> (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
>
> (3) The widow or widower;
>
> (4) Acknowledged natural children, and natural children by legal fiction;
>
> (5) Other illegitimate children.[32]

a. Reserva troncal

In order to reserve certain property in favor of certain relatives, the Civil Code provides that the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property for the benefit of relatives who are within the third degree and who belong to the line from which said property came.[33] This provision seeks to prevent persons outside a family from securing property that would otherwise have remained therein.[34] Its principal aim is to maintain as absolutely as is possible, with respect to the property to which it refers, a separation between the paternal and

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[30] CIVIL CODE, art. 886

[31] CIVIL CODE, art. 904; Ramirez v. Vda. de Ramos, G.R No. L-27952, 15 February 1982, 111 SCRA 704, 709.

[32] CIVIL CODE, art. 887.

[33] CIVIL CODE, art. 891.

[34] TOLENTINO, *supra* note 29, at 270, citing Sentencia of 30 December 1897 and Padura v. Baldomino, G.R. No. L-11960, 27 December 1958.

maternal lines, so that property of one line may not pass to the other, or through them to strangers.[35] An example is the case of Victorio Sablan who died leaving two properties to his son Pedro, who also died later without any other heirs except his mother. The latter sought to register the land but this was opposed by Victorio's surviving brothers (Pedro's uncles) on the ground that they are reservable. The Supreme Court ruled that Pedro's mother may register the property but it must be recorded on the title that Pedro's uncles have the right to reservation.[36]

b. Disinheritance

A compulsory heir may be deprived of his legitime for causes expressly stated in the law in effect disinheriting him.[37] Spanish jurisprudence has defined disinheritance as the process or act, through a testamentary disposition, of depriving in a will any compulsory heir of his legitime for true and lawful causes. Its purpose is not vengeance but retribution as there could not be any feelings of vengeance between parents and children or between husband and wife at the supreme hour of death.[38]

The following are causes for disinheritance:

> (1) When a child or descendant has been found guilty of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;
>
> (2) When a child or descendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless;
>
> (3) When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;
>
> (4) When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;
>
> (5) A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant;

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[35] 6 SANCHEZ ROMAN 1015.
[36] Edroso v. Sallar, 25 Phil. 295, 309 (1913).
[37] CIVIL CODE, art. 915.
[38] 6 MANRESA 614; 4 CASTAN 367.

> (6) Maltreatment of the testator by word or deed, by the child or descendant;
>
> (7) When a child or descendant leads a dishonorable or disgraceful life;
>
> (8) Conviction of a crime which carries with it the penalty of civil interdiction.[39]

If the cause of disinheritance is not proved, the institution of heirs in the will shall be annulled insofar as it may prejudice the person disinherited. Other devises and legacies and other testamentary dispositions shall be valid as long as they will not impair the legitime.[40]

V. CONCLUSION

Considering the scope and breadth of this topic, this paper starts with the broad concept of "humanism," followed by its narrower application in France, Italy, Spain and adjacent countries. As these nations spread their wings and conquered new territories, inevitably their culture, and political and social institutions, notably law, were transplanted on the new soil of their colonies which proved fertile, and the people hospitable to the new ideas from the West.

This paper traces the inroads made by Roman law, principally through its offspring, the Spanish Civil Code, on the indigenous customs and traditions of the "natives." Ultimately, it found acceptance and took firm root in the lives and practices of the Filipino people. In time, as the Filipinos gained more experience in governance and fell under the sway of foreign influence, they gained enough self-confidence to introduce innovations that would further enrich their laws, while retaining the enduring Latin humanist strain which by now had been inextricably interwoven into the Philippine legal system.

It takes no Nostradamus to predict that such penetrating humanistic influences shall continue to be pervasive well into the millennium.

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[39] CIVIL CODE, art. 919.
[40] CIVIL CODE, art. 918.

ARTICLE

THE CONSTRUCTION AND CONSTRICTION OF AGRARIAN REFORM LAW

Dan Gatmaytan

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