

# PHILIPPINE LAW JOURNAL

Published monthly, August to April, inclusive, during the academic year by the alumni and students of the College of Law, University of the Philippines.

Subscription ₱4.00 and 5.00 per annum. Single Numbers .75. Supplement .60

MANAGING EDITOR,  
Alexander Reyes, 1914 Law.

BUSINESS MANAGER,  
Manuel Tabora, Junior.

## ASSOCIATE EDITORS

Serafin P. Hilado, 1913 Law	-----	Alumni
Pedro Y. Ylagan, Junior	-----	College News
Conrado Benitez, Senior	-----	Note and Comment

## FACULTY ADVISORY COMMITTEE

George A. Malcolm, Dean of the College of Law.  
Clyde A. DeWitt, Professorial Lecturer on Corporations.  
José Abreu, Professorial Lecturer on Trial Practice.

AUGUST, NINETEEN HUNDRED AND FIFTEEN

## NOTE AND COMMENT

CONRADO BENITEZ, *Senior*

*Editor.*

### AN ARTICLE ON THE COLLEGE OF LAW

An interesting article on the College of Law written by Dean Malcolm has recently appeared in the June number of *The American Law School Review* (published by the West Publishing Co.). After referring to the existence of a unique legal system in this country, the result of the blending of the civil and the common law, Mr. Malcolm states that the "complement of such a system of jurisprudence is obviously a school where students are trained, in the future official language, for the practice of law in the Philippine Islands." The writer then goes on to say that—

Experience shows that students have, at great expense, been sent to American universities, and have there acquired an excellent knowledge of the English language, and studied conscientiously the principles of American law, only, on a return to the Philippines, to find themselves hopelessly at sea in the Spanish law. Other students have pursued a course of legal study in the universities of Spain or France, or in schools in the Philippines in which, in the Spanish language, the Spanish codes are studied directly, only to come forth unacquainted with the future official language of the courts where they are to practice, and unfamiliar with American adjective or substantive law or cases. In both instances the method was wrong—the student was overdeveloped in one direction and underdeveloped in another.

The College of Law aims to meet the peculiar conditions of the country, and gives the student three or four years of "PRACTICAL AND THOROUGH INSTRUCTION FOR THE PRACTICE OF LAW IN THE PHILIPPINE ISLANDS."

After giving an account of the history of the college, Mr. Malcolm dwells on the future activity and ultimate policy of the institution, thus:

With the institution of a newly established LAW JOURNAL, and next year of a post graduate review course and a free legal dispensary in connection with the work of the Public Welfare Committee, with action on our application for membership in the Association of American Law Schools, with the organization of the alumni association, and with legal research work begun by members of the faculty, the plans and hopes of the writer will have been realized. We have next to organize and develop a School of Finance and Business Administration in connection with this College.

The stock objection to a government law school in the Philippines, namely, that "there are too many lawyers and politicians" already, is met by the statement that "what is needed is not a greater quantity, but a finer quality, of men, who, thoroughly grounded in a general education, have builded thereon an understandable comprehension of the existing law and institutions of the Philippines, and who, upon graduation, can practice law in the official language and take a leading, progressive part in good government."

The ideal of the College is "efficiency"; furthermore, it "can, under any circumstances, and at all times, aim at being primarily a college of law of the Philippine Islands, for the Filipinos and other residents of the Islands, and eventually, particularly as students are graduated and gain experience, by the Filipinos."

---

#### ORGANIZATION OF THE COURTS

The lay press, no less than the annual reports of bar associations, attest that a democracy as well as a King John may delay justice. One of the chief causes of this delay of justice is the lack of efficient organization of the courts in the United States. New York State reflects the prevalent American type of an outworn judicial system. The present system, which consists of a Court of Appeals, a Supreme Court, an Appellate Division of the Supreme Court, County Courts and Surrogates, Courts, and Courts of Special Sessions and justices of the peace, works poorly because of defects in the structure itself. Firstly, the constitution rigidly creates separate courts for the judicial business of the state, instead of allowing a flexible use of the different courts. Secondly, there is also the waste of duplication that results from conferring on different courts jurisdiction over the same subject matter, though in different technical aspects of it. In many cases no court has jurisdiction to determine all the questions arising out of a single transaction, so that one human controversy must be split up into several costly law-suits in several courts.

The proposed remedy is a judicial system which is at once unified and flexible. The entire judicial power of the state should be vested in a Supreme Court—a single court with several branches: (1) A branch for petty cases. (2) A superior tribunal with jurisdiction over the more important cases,—with several divisions to each of which a special class of work is to be ascribed. (3) One branch of the Supreme Court should deal with intermediate appeals. (4) The crown of the system should be a branch of final appeal.

Furthermore, specialization in the various branches of the law is today largely unavoidable. With this in mind each judge should be assignable to a particular branch or division of the court, but there should be flexibility to utilize to the fullest the judicial officers of the state.

The power to designate judges for service throughout the state should be conferred on the chief judge of the court of final appeal.

The article is followed by a bibliography on the unification of the courts. (Austin W. Scott, Felix Frankfurter, Roscoe Pound, in *The New Republic*, May 22, 1915.)

#### "THE NEUTRALIZATION OF THE PHILIPPINES"

This is the title of an article which appeared in *Cultura Filipina* of May, 1915. It is the Spanish translation of a graduation thesis presented by Javier Gonzalez of the College of Law, this year, and is of timely interest. Among the important conclusions are the following: (1) that neutralization is the status which would best protect the existence of the Philippines; (2) that neutralization is feasible under present conditions; (3) that it should be guaranteed by the United States, Great Britain, Germany, Russia, France, Italy, Spain, China and Japan; (4) that it is advantageous to the United States and the Powers guaranteeing it; (5) that the recent invasion of Belgium by Germany is not fatal to the cause of neutralization of the Philippines; (6) that Philippine independence would be a necessary element to preserve Philippine neutralization; (7) that independent and neutralized Philippines would be able to maintain peace and order and protect foreigners and their interests; (8) that independent and neutralized Philippines would serve as a model for the neutralization of other weak states and colonies.

SHOULD THE GOVERNMENT BE ALLOWED TO APPEAL, without in the least affecting the doctrine of jeopardy established in *Kepner v. U. S.* (195 U. S. 100), in cases (1) of acquittal; (2) where the penalty was so light that even the accused deemed it prudent not to appeal; and (3) where the case was dismissed, no demurrer to the complaint or information being involved therein? This is the theme of an address delivered by Luis P. Torres at the commencement exercises of the "Escuela de Derecho de Manila," July 15, 1915. Judged from the answers of the Fiscals to that question it seems as if there is a common desire among the leading prosecutors to be allowed to appeal in the three above mentioned cases. The main reason

is that "the judge, being mortal, is fallible," and cannot therefore, free himself of the innumerable influences to which human weakness is subject. A good many cases are cited to show the need of giving the Fiscals power of appeal.

---

#### INDEX TO THE PHILIPPINE LAW JOURNAL,—VOL. I.

Readers of the JOURNAL will be glad to see an index to Volume I, published with this number, for the purpose of making convenient any references to the many valuable works contained in it.

---

"LA SUBSTANTIV DAD DEL DERECHO OBRERO."—This is an article by Don José Gonzalez Llana, in the March-April number of the *Revista General de Legislación y Jurisprudencia* (Madrid). This branch of the law may be defined as "the juridical activity of the State, called upon to intervene, on the ground of social interest, in the economic sphere of labor." Humanity was first concerned mostly with the religious problem, then with the political, and at present, the economic. The legislator and the ruler need to know the economic motives that underlie the social question. Then, the evolution of labor is taken up to the time of the French Revolution, when the laborers became free to sell their labor at a price fixed by the law of supply and demand, and the employers to employ men at a minimum wage. "The economists proclaimed the freedom of work, the jurists, the freedom of contract; but both principles are inadequate to regulate the relations between the workmen and their employers." The progress of jurisprudence is evidenced in the broadening of the conception of guardianship in many branches of the law; for example, the indemnities and damages recovered today in cases of negligence indicate a loftier sense of justice. Furthermore, all civilized nations in Europe and America have special departments charged with the protection of labor; factories and shops are inspected by the government, and labor accidents are regulated.

The other articles contained in the same number are *El Derecho Penal de la Iglesia y el del Estado*, P. Dorado; *Los Aprovechamientos de Agua para uso Industrial*, R. Gay de Montellá; *La Sucesión del Cónyuge Viudo y el Problema de las Legislaciones Forales*, José Castán; *Responsabilidad Civil de los Registradores de la Propiedad*, Diego Pazos y García; *La Institución de Bienes Reservados de la Mujer Casada*, Carlos G. Posada; reviews and others.

The January-February number contains the following articles: *La Enseñanza de las Ciencias Penales*, Eugenio Cuello Calón; *La Sucesión del Cónyuge Viudo y el Problema de las Legislaciones Forales*, José Castán; *Sobre Psicología Forense*, Emilio Miñana, (traducción); *Redención de Foros*, Manuel Lezón; *Apuntes Sobre el Abuso del Derecho*, Luis Jimenez Asúa; *revistas, etc.*

---

THE NECESSITY FOR A PUBLIC DEFENDER.—To quote from a recent speech of former President Taft: "Of all the questions before the American people I regard none as more important than this, to wit, the improvement of the admini-

tration of justice. We must make it so that the poor man will have as nearly as possible an opportunity of litigating as the rich man, and under present conditions, ashamed as we may be of it, this is not the fact." At present the district attorney is expected by the state to function as a public prosecutor, and as such he must be partisan to the prejudice of the indigent defendant. The poor person is frequently at a disadvantage when represented by unpaid, incompetent, indifferent, unscrupulous assigned counsel who is no match for the skilled district attorney. Miscarriage of justice is not an infrequent outcome. The remedy,—vital, practical, economical—is the establishment of the office of a public defender, the object of which shall be to furnish as high a quality of legal skill in behalf of the defendant as that which is now directed against him by a state's prosecutor. Such an office has been proved an unqualified success in Los Angeles. The agitation in its favor in New York, Chicago, Boston, and other large communities indicates that the movement is becoming national.—Mayer C. Goldman, in *Journal of Criminal Law and Criminology*, January, 1915.

MARRIAGE, STERILIZATION AND COMMITMENT LAWS.—A growing sentiment against the marriage of persons tainted with insanity, epilepsy, and venereal diseases has led to restrictive marriage laws in thirty of the United States and in several countries of Northern Europe. Twenty-two of these affect only the insane; Ohio nominally includes drunkards in its statute; Indiana and California have secured the most successful enforcement. Sterilization is practiced with success on the insane and should be extended to the feeble-minded. The weakness of marriage laws at present is largely due to procreation without marriage and to the ease of evading a statute in another state.—J. S. Smith, in *Journal of Criminal Law*, September, 1914.

#### R E C E N T C A S E S

##### DECIDED BY THE SUPREME COURT OF SPAIN.

1. *Nullity of Registration of Real Property.—How to Nullify the Effect of Possession under Claim of Ownership.*—Where a person is in possession of certain real property under claim of ownership, the registration of the same by another person claiming judicial possession based on alleged inheritance is void, since the former possession can only be attacked through legal proceedings, the former possession being presumed to be with just title, such presumption being the only exception to article 1954 of the Civil Code which declares that just title must always be proven, and is never presumed. (*Sent. of March 6, 1915.*)

2. *Succession. Effect of the Right to Deliberate.*—Within the time allowed the heir to deliberate whether he will accept or not the inheritance, the creditor of the deceased can not compel him to any proceeding regarding the debt of the deceased, because he can not be said to have succeeded to the personality of the deceased until he has accepted the inheritance. (*Sent. of March 16, 1915.*)

3. *Separation of Properties of Spouses.—Effect of the Same.*—In the marriage settlements the husband renounced his rights in the conjugal partnership, and an absolute separation of their properties was agreed upon. Afterwards the wife brought suit against her husband for maltreatment; the husband, then, claimed *litis expensas*. But he was not allowed such claim on the ground that there being no conjugal property, the properties of both spouses belonged to each one exclusively. (*Sentence of Feb. 13, 1915.*)

4. *Contracts.—Effect of Intimidation to Enforce Right.*—One of the parties to a contract was compelled by the other to sign the contract by telling him that if he would not do so, the former would bring suit against him for misappropriating certain property. It was held that this intimidation did not vitiate the contract, or the consent to the contract, since it was but the statement of the intention to exercise a right of action, specially when the property misappropriated belonged to the other party. (*Sent. of Feb. 12, 1915.*)

DECIDED BY THE SUPREME COURT OF PORTO RICO.

1. *Affidavit.—Its Use as Public Document.*—An affidavit is only for Court's purposes, and for such other purposes as are expressly provided by law; so that it can not be used as a public instrument to transfer ownership over real property. (*Sent. of Feb. 19, 1915.*)

2. *Contracts.—Joint Obligation.—Lack of Proof.*—A complaint was filed against an individual for the fulfillment of a contract; the proof showed that he made the contract in his name and those of his minor children. It was held that he alone could not be compelled to fulfill the contract, and the case was therefore dismissed. (*Sent. of Feb. 3, 1915.*)

3. *Conjugal Property.—Declaration of One Interested Party.*—The mere declaration of an interested party, is not sufficient to prove that certain property belonged exclusively to him and not to the conjugal partnership. (*Sent. of Feb. 13, 1915.*)

4. *Mortgage.—Interpretation of the Contract.*—The contract provided that the mortgage should be foreclosed after two years; but another clause of the contract provided that on the failure of the one party to pay for the merchandise to be sent him, the whole debt should become due. One of the parties sent merchandise to the other, the latter failed to pay for it, and the former brought action to foreclose the mortgage. It was decided that the mortgage could be foreclosed, though the period of two years had not yet elapsed, because when the parties stipulated that on the failure of the party to pay for the merchandise that was to be sent him, the whole debt should become due, it was their intention that the mortgage could also be foreclosed on that event, notwithstanding their agreement that the mortgage should be enforceable after two years. (*Sent. of Feb. 16, 1915.*)

5. *Evidence.—Declaration of One Witness Alone.*—That the testimony of one witness alone is not sufficient proof in Courts is not sustainable under the rules of Evidence.

8. *Rape.—Testimony of Offended Party.—Sufficient Corroboration.*—The girl raped testified that her teacher made her enter his office by taking her by one of her arms, and that then and there had carnal knowledge with her. One of the companions of the girl raped testified that the offended party was introduced by the teacher into his office, and the teacher closed the door behind them. It was also found that the hymen of the offended party was ruptured. It was decided that the declaration of the offended party was sufficiently corroborated; that it is not necessary that the corroboration covers all the elements of the crime; it is sufficient if it tends to show some details that establishes some connection between the accused and the crime. (*Sent. of Feb. 19, 1915.*)

# ALUMNI

(Alumni are requested to contribute to this department.)

SERAFIN P. HILADO, 1913 Law

*Editor*

## BOARD OF DIRECTORS, COLLEGE OF LAW ALUMNI ASSOCIATION

H. LAWRENCE NOBLE	- - - - -	<i>President</i>
JOSE ESPIRITU	- - - - -	<i>Vice-President</i>
SERAFIN P. HILADO	- - - - -	<i>Secretary-Treasurer</i>
PABLO LORENZO	- - - - -	<i>Member</i>
MARCELIANO MONTEMAYOR	- - - - -	<i>Member</i>

### 1913

*Eulogio Benitez* has returned after a year spent in the United States. He has acquired the degree of Master of Laws from Georgetown University, also winning the first prize for the best thesis.

*William C. Brady* has been promoted to the position of Deputy Surveyor of Customs with increased compensation.

*José A. Espiritu* has been appointed permanent instructor in Mercantile Law in the College of Law, with increased compensation.

*Serafin P. Hilado* returned recently from the United States with the degree of Master of Laws from the University of Michigan. He has now taken up his regular duties as Instructor in Law.

*John C. MacMahon* has been acting Secretary of the Philippine Commission. He was also mentioned for Chief Justice for Guam.

*William F. Mueller* has resigned as Deputy Sheriff of the City of Manila to become associated with Gabriel La O in the practice of law. He is also the Philippine representative of the Lawyers' Cooperative Publishing Company.

*Emilio Y. Hilado* has been appointed Auxiliary Justice of the Peace for Bacolod, the capital of the Province of Occidental Negros.

### 1914

*Ricardo C. Lacson* is Secretary of the new Philippine Law School.

*Eladio R. Leaño* is now the Librarian of the College of Law.

*Eusebio Ramos* is associated with Sumulong and Estrada in the practice of law.

*Alexander Reyes* has been appointed Chief Clerk in the office of the City Attorney, City of Manila.

*Jorge B. Vargas* is Private Secretary to Commissioner De Veyra.

*José Yulo* recently resigned as Librarian of the College of Law in order to devote his entire time to his duties in the law firm of Bruce and Reed.

*Anatalio Mañalac* has been appointed Justice of the Peace for Parang, Cottabato.

1915

*Howard E. Chase*, Chief Clerk of the Bureau of Prisons, has resigned and gone to the United States. He intends to take post graduate work in the Columbia University Law School.

*Javier González* is now a clerk in the Miscellaneous Division, Executive Bureau, with legal duties.

*José Teodoro* received a promotion and a transfer to the University, being appointed Instructor in Education.

*José P. Laurel* has been transferred to the Miscellaneous Division, Executive Bureau, with promotion.

# COLLEGE NEWS

---

PEDRO Y. YLAGAN, *Junior*

*Editor.*

## THE STUDENT COUNCIL

THE DEAN	Chairman Ex-Officio, College of Law.
C. H. VAN HOVEN	Chairman Pro-Tempore, President, Senior Class.
GASPAR ARANDA	Secretary, Representative, Sophomore Class.
JOSE TEODORO	Representative, Alumni.
GERONIMO SAMSON	Representative, Senior Class.
PEDRO Y. YLAGAN	President, Junior Class.
LORENZO CAMPO	Representative, Junior Class.
J. W. ARCHER	President, Sophomore Class.
RAMON SAN JOSE	Appointed Representative, Freshman Class.
JOSE P. MELENCIO	Chancellor, Philippine Barristers.
PEDRO SORRETA	Master Musician, College of Law, Musical Club.
DAVID PARGAS	Law Representative in the University Athletic Board of Control.

## THE OPENING EXERCISES OF THE COLLEGE OF LAW

### SCHWARZCOFF AWARDED THE CALLAGHAN PRIZE

It was on Monday night, June 28, when the College of Law held its opening exercises. The presence of the new President of the University drew a large crowd, and University Hall was filled with alumni, undergraduates and newcomers to welcome the University Executive and hear his opening address. The program consisted of musical pieces, followed by the remarks of the Dean and the address of President Villamor.

The ceremonies ended with the announcement by the Dean of the winner of the Callaghan prize for scholarship in the Sophomore year. Sydney C. Schwarzcoff, formerly a commanding officer of the Veteran Army of the Philippines, and now a law clerk in the firm of Wolfson and Wolfson, was pronounced to be the best scholar not only of the class of 1917 but also of the whole College. The prize consists of a set of "Andrew's American Law."

## CLASS ELECTIONS

The week after the opening of the school, the various classes met to elect their respective officers, to serve for this academic year or until their successors have been elected and qualified. Following are the results of the elections:

## OFFICERS OF THE SENIOR CLASS

<i>President</i> .....	C. H. VAN HOVEN.
<i>Vice-President</i> .....	VICENTE VARELA.
<i>Secretary</i> .....	PAULINO GULLAS.
<i>Treasurer</i> .....	RAMON S. ABANETA.
<i>Student Council Representative</i> .....	GERONIMO SAMSON.

## OFFICERS OF THE JUNIOR CLASS

<i>President</i> .....	PEDRO Y. YLAGAN.
<i>Vice-President</i> .....	MANUEL TABORA.
<i>Secretary</i> .....	JOSE P. MELENCIO.
<i>Treasurer</i> .....	FELIPE YSMAEL.
<i>Student Council Representative</i> .....	LORENZO CAMPO.

## OFFICERS OF THE SOPHOMORE CLASS

<i>President</i> .....	J. W. ARCHER.
<i>Vice-President</i> .....	ABELARDO HILADO.
<i>Secretary</i> .....	LEON E. ANCHETA.
<i>Treasurer</i> .....	JUAN RUIZ.
<i>Student Council Representative</i> .....	GASPAR ARANDA.

## OFFICERS OF THE PHILIPPINE BARRISTERS

The Philippine Barristers, one of the leading student organizations of the College, held its election on July 10; and the following were elected officers:

<i>Chancellor</i> .....	JOSE P. MELENCIO.
<i>Vice-Chancellor</i> .....	LORENZO CAMPO.
<i>Secretary</i> .....	VICENTE R. YBIERNAS.
<i>Treasurer</i> .....	MISS RUFINA SANTOS.
<i>Bailiff</i> .....	FELIPE YSMAEL.

## PERMANENT EVENTS OF THE YEAR

At the meeting of the Student Council on August 1, the following permanent events for the college year were approved:

1. Open meeting of the Philippine Barristers, Aug. 13.
2. The Sophomore Smoker, on the second Saturday evening of September.
3. Joint meeting of the Philippine Barristers and the Junior Philippine Assembly, on the first Saturday evening of October.

4. Annual Law Dance, previous to the opening of the second semester.
5. College Athletic Meet, on Thanksgiving Day.
6. Freshman Spread, on the evening of Thanksgiving Day.
7. Semi-Finals, Oratorical Contest, November 20, 1915.
8. Finals, Oratorical Contest, on or about December 11, 1915.
9. Participation in Rizal Day, December 30, 1915.
10. Debate: Seniors vs. the Philippine Barristers, last Saturday in January, 1916.
11. The Junior Reception in honor of the Seniors, on the evening of Washington's Birthday.
12. Commencement Exercises.
13. Law Forum.

#### THE POLICY OF THE NEW PRESIDENT

Not many weeks after the election of Judge Villamor to the Presidency of the University of the Philippines, he readily assumed the duties of the new office to the satisfaction of all concerned. He has visited the law classes and had a sight of the practical workings and conduct of the same.

It is undoubtedly of great interest to the Filipino people as a whole and to the students of the University, especially, to have some idea of the policy which the new University executive has adopted for the administration of the institution which makes the final touches in shaping and moulding the character of the Filipino youth. It is outlined in his remarks to the members of the Board of Regents at its session of June 14, 1915, which run as follows:

"I highly appreciate, gentlemen of the Board of Regents, the honor you have conferred upon me, and the opportunities I shall presently have of coming in touch with the flourishing youth of this University who surely will bring the most precious blessings to this land.

"I consider it a privilege to be associated with men of learning and character as are the instructors of this University; to have the opportunity of connecting my name with the greatest and most fundamental institution that the government of the United States has heretofore established in this country, an institution where the great ideals of the American people—liberty, justice, and progress—are carefully treasured as a sacred legacy to be inherited by coming generations.

"The President of the University, as administrator and executive, is placed in a unique position on account of the multitudinous relations which he has to maintain. He must keep in close touch with the members of the Board of Regents; he must have an intimate acquaintance with the several faculties of the university as well as with the student body in general. Besides this, he has to deal with the different bureaus of the government, with other educational institutions and with the public at large. The mere enumeration of these different relations will show how difficult a position is that of the President of the University.

"I am fully aware of the difficulties with which I shall be confronted in maintaining such relations, but your well-defined resolution calling

me to fill this position encourages and convinces me that I may rely upon your entire support during my administration, my success being your success, my failure your failure. I wish to assure you on my part that in my relations with the Board of Regents I will keep you fully advised of what in my opinion is necessary for the progress of the University. As regards the different faculties of the University, it will be my constant endeavor to secure everything that is necessary for their welfare and happiness as far as the economic conditions of the country permit. Of course you are well aware that the want of necessary tools and money usually results in discouragement on the part of the instructors. Therefore I hope you will not be surprised when I advocate measures to make university life agreeable and inspiring. As regards my relations with the student body, I will promote among them the acquisition of scientific knowledge essential to the development of the natural resources of the country; but I will endeavor especially to train leaders of thought and action who will faithfully preserve the glorious heritage of the past and keep alive the judicious teachings of the present as a guiding torch for the future generations. To this end, I will put forth efforts to mold their character by promoting the sense of justice and responsibility, honor and dignity, good fellowship and self-help, perseverance in their work, compliance with their duties, and love of the Alma Mater. As regards my relations with different bureaus of the government, the other institutions of learning and the public at large, I will also promote a friendly understanding in order to secure their effective co-operation. And for the welfare of this country I will exert all my energies to justify the trust and confidence you have reposed in me."

**PRESENT JUDGES OF THE COURT OF FIRST INSTANCE  
OF MANILA**



HON. SIMPLICIO DEL ROSARIO



HON. JAMES S. OSTRAND



HON. GEORGE R. HARVEY



HON. RICHARD CAMPBELL



HON. JOSE ABREU