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## THE JUDICIARY

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In his Instructions to the Philippine Commission of April 7, 1900, President McKinley after declaring, among other things, the due consideration and weight to be given to local customs, habits and conditions in the establishment of the government for the people of the Philippine Islands, enjoins that "at the same time, 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 or procedure with which they are familiar." These words presage radical changes in the legal, as well as in the political, institutions then existing in the Philippine Islands. One of the most important of these changes, properly affected by the quoted passage and which is a necessary consequence of the form of the new government is that of the Judiciary. Such a change was a relief that opportunely came to remove the irregularities and corruption in the administration of justice which were then in vogue.

It is true that under the laws and codes promulgated by the former government here, the Filipinos were with few modifications possessed of as many substantive rights and privileges to enjoy life, liberty, property and the pursuit of happiness as they are to-day. But did they actually enjoy them to their fullest extent? Yes, they existed; but they were not sufficiently protected, nor properly enforced. And thus it was not infrequent that rights were rendered useless. Why was such a situation? Was it because of the ignorance and the corruption of the judges? Undoubtedly it might be attributed in a measure to this cause. But the main trouble was due to the defect in the judicial system. As was said by President Schurmann of Cornell University in his Lecture on the Philippine Judiciary, "the judicial procedure was antiquated and bad; it was slow and costly, and worse still, could be

made as slow and costly as the wishes of a litigant might be. The judiciary, deservedly or otherwise, were reputed to be wholly corrupt and venal, and there was no respect for the administrators of the law other than that inspired by awe and fear." The organization of the courts was unsystematic and not in accord with the "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." It is to be observed that in the beginning executive officers were either made members of courts or separately vested with judicial powers (see Royal Cédulas of 1527, 1542, 1571, 1583, and 1847; Royal Order of January 18, 1865). Judicial tribunals in turn took cognizance of cases which properly belonged to the administrative department of the government (see Royal Cedula of May 29, 1521, 1541; of Nov. 20, 1542). In other words there was no separation of governmental powers. Executive officers were naturally less familiar with the laws and less versed in court practice than judicial officers. Furthermore there was danger from the close connection between the judicial and the executive departments of the infringement of the laws and the defeat of justice. The system of checks and balances was lacking. Another injurious feature was the frequent abolitions and re-establishments of existing courts, which destroyed permanence and arrested the stable course of their operation, much to the detriment of the attainment of justice.

These defects were to some extent improved later by the Royal Cedula of Jan. 30, 1885 and Royal Decree of May 22, 1885, when the judicial power of governors and the positions of *alcaldes ordinarios* and *alcaldas mayores* were abolished, and Judges of Courts of First Instance substituted in their stead, and also by the Order of the *Audiencia* of Manila of 1888, whereby the judicial powers of *gobernadorcillos* were suppressed and transferred to justice of the peace courts. The *Audiencia*, too, underwent several changes until finally it came to what it was at the time of American Occupation, when it was composed of a Chief Justice (not the Governor-General), two Presidents of Chambers, eight Associate Justices, an Attorney General, an Assistant Attorney General, a Secretary of the *Audiencia*, and a Secretary for each of the two chambers.

Such was the state of affairs as described by President Schurmann when sovereignty over the Islands was transferred by Spain to the United States. It was soon perceived that the administration of justice could not continue in this manner, if the peace, progress, and happiness of the Filipino people were at all to be fostered. Judicial reform was imperative. In pursuance of the declared objects of the present government, and as a necessary consequence of the establishment of such form of government, reforms were inaugurated in the Judiciary.

It is noteworthy, however, to observe that changes were more or less in operation before the establishment of permanent government. During the military régime, temporarily provided by the President of the United States under his war powers, pending the termination of hostilities and the return of peace, several mili-

tary proclamations and general orders suspended the criminal, and limited the civil, jurisdiction of the existing courts. They were later permitted to resume their former functions, but with certain restrictions. These measures were in the main military, but there was evolved in that period a very important reform, *i. e.*, the promulgation of a new code of Criminal Procedure as contained in General Order No. 58. This was a radical departure from the old system. It provides for more liberal rules to protect the accused and subjects the courts to a fair and just conduct of trials in all cases.

But the real change did not come until the assumption of the powers of government by the Philippine Commission, beginning the first day of September, 1900, and the final implantation of civil government. By Act No. 136, passed on June 11, 1901, the Philippine Commission organized the courts of the Philippine Islands, after having abolished the old *Audiencia* and the Courts of First Instance. At the head of these newly established courts is the Supreme Court consisting of a Chief Justice and six Associate Justices, all of whom are appointed by the President of the United States by and with the consent of the Senate. It has appellate jurisdiction over cases coming from the Courts of First Instance and other courts from which appeal is allowed thereto by law. It has original jurisdiction over cases specially provided by law, and to issue writs of mandamus, certiorari, prohibition, habeas corpus, and quo warranto. Its judgments are final except in those cases involving the Constitution, or any statute, treaty, title, right, or privilege of the United States, or an amount exceeding \$25,000, in which case, appeals are allowed to the Supreme Court of the United States. Inferior and subordinate courts are the Courts of First Instance, the justice of the peace courts, and the special courts. The Courts of First Instance took cognizance of appeals from justice of the peace courts and of original causes as provided by law. It is worthy of mention in this connection that the justice of the peace courts are not a new creation as the others, but are a continuation of the old ones established by the Spanish régime. The judicial system underwent certain transformations since its operation from time to time until they were reorganized by Act No. 2347 passed on February 28, 1915.

It will not be of interest and it is beyond the sphere of this paper to go further into a detailed description of the organization, jurisdiction and operation of the present Judiciary. What matters to us more particularly is the inquiry as to what ultimate benefits are derived from the working of such a system. Does it come up to a level "essential to the rule of law and the maintenance of individual freedom?" It can not be positively stated that the Philippines is possessed of the best Judiciary. Its experience is yet of short duration; it has yet to meet the exigencies of future conditions, and to undergo the test of time. But this much can be safely said: It is better than the old; it secures more the rights of individuals and more efficiently applies remedies for the redress of wrongs. It is efficient in that the separation of powers of government is observed and the system of checks and balances applied. Besides, the courts are administrated by men qualified by merit and by known in-

tegrity and moral strength and not by influence or interest. Despite the difficulties encountered on account of the initial unfamiliarity of the Filipino judges with the new laws of procedure and the confusion produced by the blending of two different legal systems—the Civil and the Common Law systems,—our courts have acquitted themselves well during a comparatively short period of their operation. Our Supreme Court, headed from the beginning by Chief Justice Arellano, has now gained the recognition and praise of the lawyers and judges of the United States and other countries.

Guided by those rules which are contained in what is commonly known as the Bill of Rights incorporated in both the President's Instructions to the Philippine Commission and in the Act of Congress of July 1, 1902, the courts are performing their part to effect "the preservation of these great principles of liberty and law" which are enjoined to "be established and maintained in their Islands for the sake of their liberty and happiness."