

# WHAT LESSONS MAY BE DERIVED BY THE PHILIPPINE ISLANDS FROM THE LEGAL HISTORY OF LOUISIANA

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*(Awarded the Lawyers' Cooperative Publishing Co. prize of the L. R. A. (N. S.) for  
the best thesis presented for graduation from the College of Law,  
University of the Philippines.)*

## PART TWO

### THE PHILIPPINE ISLANDS SHOULD REMAIN A CIVIL-LAW COUNTRY

We can not now evade the tendency to amalgamate into one body the laws of the conquerors and the laws of the conquered \* \* \*. But whatever may be the fate of the Philippine Islands, whether destined to become a power or to remain a mere colonial possession of the United States, the writer believes that she should, at least in so far as her private law in civil matters is concerned, continue to be a civil-law country. Legally and socially, the civil-law system has become so interwoven with the life and proprietary interests of the inhabitants of these Islands that to introduce an entirely new legal system would be destructive of an institution under which the Filipino people have been bred and to which they have been accustomed for a period of more than three hundred years. (Page 93.)

As a matter of psychology, the only way to perceive an object clearly is to compare it with something else, and so note the resemblances and differences. First, therefore, will be a brief survey of the histories of the jurisprudences of Louisiana and the Philippines and then a comparative study of the same.

## HISTORY AND DEVELOPMENT OF THE JURISPRUDENCE OF THE STATE OF LOUISIANA

The jurisprudence of the State of Louisiana occupies a position solitary and unique in the American system of jurisprudence. Of the vast territories acquired by the United States from France, Spain, and Mexico, Louisiana is, at this time, the only State in which the civil law has been retained, and forms a large portion of its jurisprudence. In fact, it differs from the other States in that its jurisprudence is largely based on the Roman or civil law instead of the Common Law of England.

### (A). BEFORE AND DURING FRENCH DOMINATION

Little or nothing could be said of the early law in Louisiana before the French domination. It was only in 1712 when Antoine Crozat took possession of Louisiana under his royal charter that the legal history of Louisiana may be said to have begun. By the provisions of his charter it was decreed that the laws, edicts, and ordinances of France, and the Customs of Paris were extended to Louisiana. The system of law thus introduced was the same as that which had been established in Canada, or new France, and continued so to develop until the year 1763, when France by a secret treaty (*ante*, p. 11) ceded to Spain all that portion of Louisiana which lay west of the Mississippi, together with the city of New Orleans and the Islands on which it stands (Howe's Studies in the Civil Law, pp. 136-137; 22 American Law Review, pp. 889-902; 1 La. Law Journal, p. 157).

### (B). DURING SPANISH DOMINATION

With the Spanish domination elements of Spanish law and jurisprudence were naturally introduced in Louisiana. The French laws, however, continued in force until they were completely abrogated by a proclamation of the Spanish governor O'Reilly. (*Vide*, 5 Martin's Reports, 284; also 4 Martin's Reports, 36, Derbigny, J.) O'Reilly further caused a code of instructions in reference to pleading and practice according to the laws of Castille and the Indies to which was annexed an abridgment of the criminal laws and some directions in regard to wills. (*Vide*, Saunder's Revised Civil Code of Louisiana, (1909) iv and v.) The French laws were thus eventually overthrown. (*Vide*, Moreau & Carleton, Introduction to Las Siete Partidas, p. 21; Livingston Introduction to System of Penal Law, p. 59; Martin's History of Louisiana, p. 211 (1882); 4 Martin's Reports, 368, Derbigny, J.; 17 La. Rep. 277; Gayarrés History of Louisiana, Spanish Domination, although the contrary opinion was also maintained (La. Law Journal, No. 2, pp. 96-100; Amos' Civil Law, p. 463; Barbé Marbois, History of Louisiana, p. 338). It is admitted, however, that from this time the laws of Spain became the sole guide of the tribunals in

their decisions (Martin's History of Louisiana, p. 211 (2nd Ed.) ). It is to be remarked, however, that as the laws of France and Spain proceeded from the same source, the Roman law, the transition was hardly felt and very little inconvenience ensued.

But what laws, codes, or statutes were in force in Louisiana during the Spanish domination? A thorough knowledge of the kind, character, and origin of such laws presupposes familiarity with the history and development of the laws of Spain. In fact, it would be impossible to understand the early Spanish laws that once prevailed in Louisiana, and a comparative study of the legal histories of Louisiana and the Philippines would be but a futile attempt, were the author to dispense with a prior inquiry and investigation on the legal history and development of the laws of Spain. In view of the fact, however, that such an attempt on the copious sources of the Spanish laws might unduly lengthen this work, the author has deemed it advisable to reduce to a form of outline or syllabus the result of his researches and investigations on the subject for the purpose of reference afterwards:

HISTORICAL DEVELOPMENT OF THE LAWS OF SPAIN

- |                                |   |  |
|--------------------------------|---|--|
| I. UNDER<br>THE<br>ROMANS.     | { | a. Being a Roman province, Roman law governed:<br>Law of Gaius, Ulpian and Papinian applied<br>and extended by imperial constitutions and<br>decrees. (1)  |
|                                |   | b. Period: 210 B. C.—414 A. D.   |
| II. UNDER<br>THE<br>VISIGOTHS. | { | a. Roman law gradually supplanted by Visigothic laws: Code<br>of Euric or Tolosa and Breviarium Aniani. (2)  |
|                                |   | b. Roman and Visigothic laws coalesced.<br>Result.   |
|                                |   | Forum Judicum.<br>(693 A.D.)   |
|                                |   | 1. In early Spanish called "Fuero de los Jueces" later corrupted into "Fuero Juzgo". (3)   |
|                                |   | 2. Embodies ancient laws and customs of the Visigoths.   |
|                                |   | 3. "Deeply tinged with Roman ideas". (4)   |
|                                |   | 4. "The most remarkable monument of legislation which ever emanated from semi-barbarian people, and the only substantial memorial of greatness or erudition bequeathed by the Goths to posterity". (5) |
|                                |   | 5. For three and one-half centuries remained the sole compilation of general laws in Spain.  |
|                                |   | 6. Character and arrangement (6)   |
|                                |   | c. Period: 414-711 A.D.  |

## HISTORICAL DEVELOPMENT OF THE LAWS OF SPAIN.—Cont.

III. UNDER THE ARABS.	}	a. Visigothic Empire Subjugated by Arabs.	}	a) Preparation inaugurated by Conde de Castilla. (Don Sancho Garcia.)	
		b. Power of Castille finally became predominant.		1. Fuero Viejo (1212 A.D.)	b) Continued to have force until the middle of the fourteenth century. (7)
		c. Bodies of laws promulgated.		2. Fuero Real (1255 A.D.)	c) Probably written in Latin.
				3. Especulo: 1258 A.D.	d) Character and arrangement. (8)
				4. Las Siete Partidas. 1263 A.D.	a) Prepared by Alfonso IX as introduction to Las Siete Partidas.
				5. Leyes de Estilo. 1300 A.D.	b) "Fuero Real" is to the Partidas what the Institutes are to the Digest of Justinian. (9)
		6. Ordenamiento de Alcalá. 1348 A.D.	c) Character and arrangement. (10)	Nature, character and arrangement. (11)	
			a) Largely a compilation of Roman law modified by local customs. (12)	b) Solemnly promulgated by Alfonso XI.	
			c) "By far the most valuable monument of legislation not merely of Spain but of Europe". (13)	d) Character and arrangement. (14)	
			a) Essentially code of practice.	b) Not compiled officially.	
			c) Character. (15)	a) A collection of miscellaneous laws relating to court procedure, contracts, will, and crimes.	

HISTORICAL DEVELOPMENT OF THE LAWS OF SPAIN.—Cont.

- |  |   |   |  |
|--|---|---|--|
| III. UNDER THE ARABS. Continued.   | c. Bodies of laws promulgated. Continued. | 7) Ordenamiento de Alcalá. 1348 A.D. Continued.   | b) More especially intended for form of judicial proceedings.<br>c) History and character. (16)  |
|  |   | 7) Ordenamiento Real. 1490 A.D.                   | History and arrangement. (17)  |
| d. Period: 711-1492 A.D.   |   |   |  |
| a. Aragon and Castille united.   |   |   |  |
| b. Attempts of Isabella and Ferdinand to introduce order in system of legislation. |   |   |  |
| IV. FROM EXPULSION OF ARABS TO END OF 18TH CENTURY.                                | c. Bodies of Laws promulgated.            | 1. Leyes de Toro. 1502. A.D.                      | a) Included about 80 enactments.<br>b) Provisions related mainly to wills, succession and support of illegitimate children.<br>c) History and character. (18)                                  |
|  |   | 2. Nueva Recopilación. 1567 A.D.                  | a) A compilation of preceding legislation including Ordenamiento de Alcalá and Leyes de Toro.<br>b) Character and arrangement. (19)  |
|  |   | 3. Recopilación de las Leyes de Indias. 1680 A.D. | a) Mostly royal decrees issued for government of Spain's colonial possessions.<br>b) Incidentally dealt with private substantive law.<br>c) Said to be "the greatest colonial law books". (20) |
|  |   | 4. Autos Acordados (1745). (21)                   |  |

## HISTORICAL DEVELOPMENT OF THE LAWS OF SPAIN.—Cont.

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|--|--|--|--|
| <p>IV. FROM EX-PULSION OF ARABS TO END OF 18th CENTURY.<br/>Continued.</p> | <p>c. Bodies of Laws promulgated. Continued.</p>   | <p>5. Novísima Recopilación. 1805 A.D.</p> | <p>a. Compiled by Juan de la Riguera Valdo-<br/>lemar.<br/>b. Given precedence<br/>over all prior legis-<br/>lation.<br/>c. Continued to be<br/>Chief embodiment<br/>of Spanish general<br/>legislation until<br/>enactment of special<br/>codes. (22)</p>   |
|  | <p>d. Period: 1492-1810 A.D.</p>   |  |  |
|  | <p>1. Marked by the disintegration of the body of Spanish laws and the scientific reclassification thereof. (23)</p> |  |  |
|  | <p>2. Causes and events leading to Codification. (24)</p>  |  | <p>a. Spain's written law up to this time consisted mainly of general collections more or less systematically arranged.<br/>b. Difficulties and inconvenience resulting from such state.<br/>c. Success of France in Codification under Napoleon Bonaparte.</p>  |
| <p>V. THE MOD-ERN EPOCH OR THE CO-DIFICATION ERA.</p>                      | <p>3. Attempts towards Codifi-cation. (25)</p>   |  | <p>a. Espiga y Gadea (deputy to Cortés) introduced a resolution for the Codification of Spanish civil, penal, and procedural laws (Feb. 1811)<br/>b. Resolution adopted.<br/>c. Code Committee of five Spanish jurists appointed (1813)<br/>d. Unsettled political conditions prevented successful outcome till 1822.<br/>e. First practical results in the field of criminal law.</p> |
|  | <p>4. Modern Codes.</p>  |  | <p>a. Penal. { 1. Penal Code of 1822.<br/>2. Penal Code of 1850.<br/>3. Penal Code of 1870.<br/>b. Commer- { 1. Commercial Code of<br/>cial. 1829.<br/>2. Commercial Code of<br/>1886.<br/>c. Civil: Civil Code of 1889.<br/>d. Procedure. { 1. Criminal: Ley de En-<br/>juiciamiento Crimi-<br/>nal of 1872.<br/>2. Civil: Ley de Enjui-<br/>ciamiento Civil of<br/>1855.</p>         |

## HISTORICAL DEVELOPMENT OF THE LAWS OF SPAIN.—Cont.

V. THE MOD- ERN EPOCH OR THE CO- DIFICATION ERA. Continued.	}	5. Special Sub- stantive Laws	}	1. Ley Hipotecaria (Mortgage Law). 2. Ley de Minas (Mining Law). 3. Ley de Aguas (Law of Waters). 4. Ley de Propiedad Intelectual (Copy- right Law).
		6. Miscellaneous Laws.	}	1. Código Penal de la Marina de Guerra (1888). 2. Code of Military Justice (1890). 3. Organic Law of the Supreme Council of Army and Navy. 4. Law of Foreigners for Ultramarine Provinces. 5. Notarial Laws (E.g. of May 28, 1862). 6. Contencioso—Administrative Law of 1888 (September). Etc.

## REFERENCES

1. Howe's Studies in the Civil Law, pp. 132 *et seq.*, Smidst. Civil Law of Spain and Mexico, pp. 1-102; Sanchez Román, Derecho Civil, Vol. I, pp. 123-132; Walton's Civil Law in Spain and Spanish-America, p. 19.
2. Walton's Civil Law in Spain and Spanish-America, pp. 19, 31 and 42; Sanchez Román, Derecho Civil, Vol. I, pp. 145 *et seq.*
3. Sanchez Román, Derecho Civil, Vol. I, pp. 171-196; Philippine Law Review, May, 1912, p. 769; Eseriche, Diccionario Razonado de Legislación y Jurisprudencia, II, 1104, *et seq.*
4. Kitchin, History of France, I, p. 66; See also Sanchez Román, Derecho Civil, Vol. I, p. 177.
5. Preface, Visigothic Code by Scott XXIV.
6. Sanchez Román, Derecho Civil, Vol. I, p. 177-192; The Visigothic Code, Scott; Philippine Law Review, Vol. I, pp. 768-777, 816-827.
7. Sanchez Román, Derecho Civil, Vol. I, p. 253 *et seq.*
8. Sanchez Román, Derecho Civil, Vol. I, p. 253 *et seq.*; Códigos Españoles, by Antonio de San Martín, Vol. I; Walton's Civil Law in Spain and Spanish-America, pp. 69 and 70.
9. Moreau and Carleton's Partidas, Preface, VII; Also see Howe's Studies in the Civil Law, p. 141.
10. Sanchez Román, Derecho Civil, Vol. I, p. 267 *et seq.*; Walton's Civil Law in Spain and Spanish-America, pp. 71 and 72; Eseriche, Diccionario Razonado de Legislación y Jurisprudencia, Vol. II, p. 1112 *et seq.*
11. Sanchez Román, Derecho Civil, Vol. I, 279 *et seq.*; Eseriche, Diccionario Razonado de Legislación y Jurisprudencia II, 862 *et seq.*, p. 72.
12. Stubbs, Constitutional History of England I, see 8; Philippine Law Review I, 963; Sanchez Román, Derecho Civil, Vol. I, 283 *et seq.*
13. History of Spain and Portugal, Samuel Astley Durnham, cited in Philippine Law Review I 598.
14. Philippine Law Review, Vol. I, pp. 961-971; Vol. II, pp. 1-10, 129-137; Also Moreau Carleton's Partidas; History of Spain and Portugal VI, pp. 109, 131-132; Sanchez Román, Derecho Civil, Vol. I, pp. 283-315; Walton's Civil Law in Spain and Spanish-America, pp. 75-77; Eseriche, Diccionario Razonado de Legislación y Jurisprudencia IV, 462, 463.
15. Sanchez Román, Derecho Civil, Vol. I, pp. 316 *et seq.*; Eseriche, Diccionario Razonado de Legislación y Jurisprudencia II, 910.
16. Sanchez Román, Derecho Civil, Vol. I, pp. 319-326; Walton's Civil Law in Spain and Spanish-America, p. 72.

17. Sanchez Román, *Derecho Civil*, Vol. I, p. 363 *et seq.*; Walton's *Civil Law in Spain and Spanish-America*, pp. 74, 75; Escriche, *Diccionario Razonado de Legislación y Jurisprudencia IV*, 385-6.
18. Sanchez Román, *Derecho Civil*, Vol. I, pp. 372-386.
19. Sanchez Román, *Derecho Civil*, Vol. I, pp. 392-401; Walton's *Civil Law in Spain and Spanish-America*, pp. 77 and 78; Escriche, *Diccionario Razonado de Legislación y Jurisprudencia IV*, p. 804.
20. Barrows' *History of the Philippines*, p. 110; *Vide*, also Sanchez Román, *Derecho Civil*, Vol. I pp. 402-408; Escriche, *Diccionario Razonado de Legislación y Jurisprudencia IV*, 804.
21. Walton's *Civil Law in Spain and Spanish-America*, pp. 74 and 82.
22. *Vide*, Sanchez Román, *Derecho Civil*, Vol. I, pp. 409-419.
23. Walton's *Civil Law in Spain and Spanish-America*, p. 23.
24. *Vide*, *Philippine Law Review*, Vol. I, p. 602; Sanchez Román, *Derecho Civil*, Vol. I, pp. 510-511.
25. *Vide*, Sanchez Román, *Derecho Civil*, Vol. I, pp. 510-604.

Of the early Spanish codes or laws found in the foregoing outline, the following were, not to speak of the other Spanish "recopilaciones", of minor importance, in force in Louisiana during the Spanish domination, namely, the *Fuero Juzgo*, *Fuero Viejo*, *Fuero Real*, *Las Siete Partidas*, "Recopilación" of the Indies, and whatever royal cédulas were accordingly made applicable to Louisiana.

#### (C). DURING AMERICAN DOMINATION

On October 1st, 1800, it will be remembered, a treaty was concluded between France and Spain by which the latter agreed to restore to France the province of Louisiana (*ante*, p. 11). France, however, did not take actual possession thereof until November 30, 1803, and only for a period of twenty days, for by the treaty of April 30, 1803, it was ceded to the United States by France. Part of this immense territory was, pursuant to the Act of Congress (*ante*, p. 21), erected into the territory of Orleans including in its boundaries about the area of the present State of Louisiana. The rest of the purchase was erected into the district of Louisiana, and later into the territory of Louisiana and in 1812 into the territory of Missouri (*ante*, p. 21).

During the early days of the American occupation, the Spanish municipal laws continued in force. This is by the rule that when a region or territory is ceded, its municipal laws continue in force until abrogated by the new power (*infra*, p. 80).

The condition of the law of Louisiana during the first days of the American occupation was most confusing, not to say chaotic. It will be recalled that the old Spanish laws were, at the time of the acquisition of Louisiana by the United States, in full force and effect in Louisiana. Congress, soon after the ratification of the treaty of Paris for the cession of Louisiana, passed several Acts relating to the government and administration of the newly acquired territory. The legislative council of the territory of Orleans likewise passed two Acts, (1) That of May 4, 1805, prescribing "that all crimes, offenses and misdemeanors hereinbefore named, shall be taken, intended and construed according to, and in conformity with, the common law of England; and that the forms of indictment, the method of trial, the rules of

evidence, and all other proceedings whatsoever in the prosecution of said crimes, offenses and misdemeanors, changing what ought to be changed, shall be, except as by this act is otherwise provided for, according to the said common law," and (2) that of July 3, 1805, prescribing a common law trial "for all other crimes." In all these Acts of Congress and of the legislative council there was no express abrogation of any Spanish laws. Whatever repeal occurred was effected by the unsafe and dangerous doctrine of "repeal by implication." Thus we find the old Spanish laws and compilations: *the Fuero Juzgo, Fuero Viejo, Fuero Real, Las Siete Partidas, Recopilación* of the Indies, standing side by side with the Acts of Congress and of the legislative council of Louisiana, with the common law of England, and even with the Federal Constitution, for it will be remembered that upon the cession of the territory to the United States, the Constitution at once became the supreme law of the territory. What was worse was that copies of some of the most important Spanish laws in force could not be obtained (Martin's History of Louisiana, p. 344). In the administration of justice it was even doubted whether the Spanish or English law was to be applied. And this was not all, for the confusion of tongues likewise seriously impeded the administration of justice (Martin's History of Louisiana, p. 345). Let us then imagine a country governed by different systems of law: Roman, Gothic, and Anglo-American—laws differing not only in origin but also in fundamental and basic principles; a country where different tongues were spoken: French, Spanish, and English; a country whose inhabitants differed, not only in customs but in history and traditions; a country where copies of the very laws in force to command obedience to the citizens were not available, and such a country was the territory of Louisiana at the early days of the American occupation.

(D). LOUISIANA AFTER HER ADMISSION TO STATEHOOD.  
CODIFICATION

The territory of Orleans was admitted to the sisterhood of States on the 30th of April, 1812, (*vide, ante*, p. 21). Until and even after the admission, however, to the Union the perplexing and intolerable condition of the law continued. Very many attempts, as will be seen, were made towards reclaiming the State from such a condition.

During the early days of the American occupation of Louisiana, there naturally took place a large influx of lawyers from the other States and among them was Livingston. These immigrant lawyers, bred in common-law principles, made strong efforts to secure the adoption of the common law in Louisiana, at least in the form of procedure. This measure naturally excited the opposition of native barristers long accustomed to laws of Roman origin. The common-law lawyers were defeated and Livingston was selected to draw up a code of procedure which was adopted. This code was the germ of a larger and more extended code of practice that was later adopted in 1824. This code of 1824 is, essentially, the code of practice now in force (namely, the Code of 1824, revised in 1870 as to include a few statutory modifications

of details made between 1824 and 1870). (*Vide*, Garland's Revised Code of Practice of Louisiana, 3rd Ed.)

It will be recalled (*vide, ante*, pp. 70-71) that the Spanish rules of private law in force in Louisiana in 1803 were not collected into a code, nor to be found in any book, but had to be sought in a voluminous and ill-arranged legal literature in the Spanish, French and even Latin languages. The laws, when found, consisted partly of treatises and institutional works, and partly of statutes or ordinances. The difficulty of determining what was the exact rule on any given subject was increased by the fact that it was, in many cases, necessary, first, to decide to what extent statutes and ordinances promulgated in Spain had been intended to apply to the colonies.

To obviate these difficulties and uncertainties, the territorial legislature, in 1806, appointed a commission "to compile and prepare a civil code for the use of this territory." In 1808 a civil code prepared by the commission and based on the first draft of the Code Napoleon was adopted by the second territorial legislature.

It is here to be remarked, however, that while codification in Louisiana may be said to have begun at the time Louisiana was yet a territory of the United States, the codifying spirit really reached its zeal after the admission of the territory into the Union. Thus, it was by the Act of February 10, 1820, of the Louisiana legislature that the preparation of the criminal code was authorized. Livingston's preliminary report of the same was submitted to the legislature, but which for some reasons or other was not adopted. Again, it was in 1822 that a commission was appointed "to revise the civil code by amending the same in such a manner as they shall deem it advisable, and by adding, under each book, title, and chapter of said work, such of the laws as are still in force and not included therein" and likewise to prepare and submit "a treatise of the rules of civil actions, and a system of the practice to be observed before our courts" (*vide*, Act 1822, p. 188). Both codes were accordingly submitted and adopted. From time to time, after the year 1825, the Legislature amended, repealed or modified particular provisions of the Civil Code and the Code of Practice, but there was no further revision of the codes until the year 1870, when another committee of revision was constituted. This revision attempted nothing further than to introduce into the texts all the statutes, passed between 1825 and 1870. Since 1870 there has been no authoritative revision until 1908 when the General Assembly passed an Act authorizing the Governor to appoint a commission to revise the civil code of 1870.

The law merchant was also intended to be codified but it was not achieved, and the law merchant of the United States remained in force in Louisiana. So it was held in *Wagner vs. Kenner*, 2 Rob., p. 122, that "although the laws of Spain were not abrogated by the taking possession of the country by the United States, yet, from that event, the commercial law of the Nation became the commercial law of New Orleans" (*vide*, also *Robinson vs. Nott*, 2 Mart. N. S., p. 123; *Chaffraix vs. Price*, 29 An., p. 176; and, *Pugh vs. Moore*, 44 An., p. 209). The rules of evidence were

likewise intended to be reduced to codified form. This was neither accomplished, and it was held in the case of *Granguet vs. Prudhomme*, 3 La., p. 86, that "by common—almost universal—consent the resort to it was abandoned, and reference had to the rules of evidence as found in the English law."

(E). PRESENT STATE OF LOUISIANA JURISPRUDENCE

So far therefore as the private law in civil matters of Louisiana is concerned, (law of person, property, and obligation) Louisiana may be said to be a civil-law State. Her civil law is in a codified form, founded on the Code Napoleon which in turn is founded on the Roman law. The law merchant is not in a codified form for it has been held that in commercial matters Louisiana is to follow the law merchant of England (*vide*, *Wagner vs. Kenner*, 2 Rob., p. 122; *Robinson vs. Nott*, 2 Mart. (N. S.), p. 123; *Chaffraix vs. Price*, 29 An., p. 176; and *Pugh vs. Moore*, 44 An., p. 209). In other words, the common-law rules as to what are the rules of commercial law, prevail in Louisiana just as they do in the other States. The law of evidence in Louisiana is the common-law evidence (*vide*, *Planters Bank vs. George*, 3 Martin, p. 356; *Granguet vs. Prudhomme*, 3 La., p. 86). As to criminal law and procedure, the general principles and methods of the common law govern in Louisiana without any admixture whatever of principles derived from any other system. The system of pleading and practice established in the Code of Practice may be described as a rationalized and simplified form of common-law pleading and practice. All the writs of the common law are used, and used in much the same way as at common law, and under the same names, as for example, the writs of *feri facias*, *distringas*, *mandamus*, *prohibition*, *habeas corpus*, and *certiorari* (*vide*, *Garland's Revised Code of Practice of Louisiana*.)

Reduced, therefore, to a simple form of outline or syllabus here is submitted the following:

HISTORICAL OUTLINE OF THE JURISPRUDENCE OF THE STATE OF LOUISIANA.

- |                                |   |   |   |
|--------------------------------|---|---|---|
| I. BEFORE FRENCH DOMINATION.   | }   | Little or nothing could be said of the early law of Louisiana before French occupation. (1)   |   |
| II. UNDER FRENCH DOMINATION.   |   | <ol style="list-style-type: none"> <li>1. By the charter of Crozat, the laws, edicts, and ordinances of Paris were extended to the territory of Louisiana. (2)</li> <li>2. System of law similar to that established in Canada or new France. (3)</li> </ol>  |   |
| III. UNDER SPANISH DOMINATION. | }   | <ol style="list-style-type: none"> <li>1. French laws continued in force until abrogated by proclamation of O'Reilly. (4)</li> <li>2. French laws eventually overthrown. (5)</li> </ol>   |   |
|                                |   | <ol style="list-style-type: none"> <li>3. Bodies of Spanish laws extended to Louisiana. (6) <table border="0" style="display: inline-table; vertical-align: middle;"> <tr> <td style="font-size: 4em; vertical-align: middle;">}</td> <td> <ol style="list-style-type: none"> <li>a. Fuero Juzgo.</li> <li>b. Fuero Viejo.</li> <li>c. Fuero Real.</li> <li>d. Las Siete Partidas. (7)</li> <li>e. Recopilación of Castille.</li> <li>f. Recopilación de las Leyes de Indias. (8)</li> </ol> </td> </tr> </table> </li> </ol> | } |
| }                              | <ol style="list-style-type: none"> <li>a. Fuero Juzgo.</li> <li>b. Fuero Viejo.</li> <li>c. Fuero Real.</li> <li>d. Las Siete Partidas. (7)</li> <li>e. Recopilación of Castille.</li> <li>f. Recopilación de las Leyes de Indias. (8)</li> </ol> |   |   |

HISTORICAL OUTLINE.—Cont.

IV. UNDER AMERICAN SOVEREIGNTY.

- a. Louisiana as territory.
    - 1. Spanish laws continued in force. (9)
      - a. Causes.
        - 1. Sudden grafting of Anglo-American institutions upon an older system of law.
        - 2. Doctrine of Repeal by implication.
        - 3. Scarcity of copies of Spanish laws in force.
        - 4. Diversity of languages.
      - b. Result.
        - 1. Passage of Acts of May 4, 1805 and April 10, 1805 by territorial legislature.
          - 1. Passage of Act of May 4, 1805 adopting common law system of criminal law, procedure and evidence.
          - 2. Passage of Act of April 10, 1805, establishing a system of pleading and practice.
        - 2. Codification Begun.
          - a. Appointment of Commission to prepare civil code.
          - b. Adoption of civil code of 1808.
    - 2. State of laws: intolerable and most confusing. (10)
- b. Louisiana as State.
  - 1. Perplexing and intolerable condition of the law continued.

HISTORICAL OUTLINE.—Cont.

IV. UNDER AMERICAN SOVEREIGNTY. Continued.	b. Louisiana as State. Continued.	2. Codificación continued: Result.	a. Appointment of commission to revise civil code of 1808 and to prepare a code of practice. b. Revision of civil code of 1808 (Revised Civil Code of 1825 and 1870) and adoption of Code of Practice of 1825 (revised in 1870).									
		3. Spanish laws abrogated by Act of 1828 (11).										
	c. Present State of Louisiana Jurisprudence. (Blended System.)	1. Private Law.	Codified form founded on Code Napoleon: Revised Civil Code of 1870. (12) Follows law merchant of England and other States of the Union. (13)									
		2. Procedure. <table border="0" style="display: inline-table; vertical-align: middle;"> <tr> <td style="font-size: 2em; vertical-align: middle;">{</td> <td style="padding: 0 5px;">Civil</td> <td style="font-size: 2em; vertical-align: middle;">}</td> </tr> <tr> <td></td> <td style="text-align: center;">and</td> <td></td> </tr> <tr> <td style="font-size: 2em; vertical-align: middle;">{</td> <td style="padding: 0 5px;">Criminal.</td> <td style="font-size: 2em; vertical-align: middle;">}</td> </tr> </table>	{	Civil	}		and		{	Criminal.	}	1. Pleading and practice: system follows Common law: Revised Code of Practice of 1870. (14) 2. Evidence: common law. (15)
{	Civil	}										
	and											
{	Criminal.	}										
		3. Criminal Law: Common law, except statutory offenses. (16)										
		4. Constitutional and Administrative Law.	Based on Common-Law principles.									

## REFERENCES

1. 22 American Law Review, pp. 889-902.
2. Howe's Studies in the Civil Law, pp. 136-137; 22 American Law Review, pp. 889-902; 1 La. Law Journal I, p. 157; Saunder's Revised Civil Code of Louisiana (1909), pp. III and IV.
3. Id. (2).
4. 5 Martin Reports, 36 (Derbigny J.)
5. *Vide*, Moreau and Carleton Introduction to Las Siets Partidas, p. 21; Livingston Introduction to System of Penal Law, p. 59; Martin's History of Louisiana; 4 Mart. Rep. 368 (Derbigny, J.); 17 La. Rep. 277.
6. 22 American Law Review, pp. 889-902.
7. Hallett vs. Collins, 10 How. (U. S. 174, 181.)
8. *Vide*, O'Reilly Introductions, cited in Saunder's Revised Civil Code of Louisiana V.
9. Gayarres, History of Louisiana, Spanish Domination; Martin's History of Louisiana, (2nd Ed.), p. 211; *vide*, Pres. Jefferson, message to Senate and House of Representative, Nov. 14, 1803.
10. Philippine Law Review, May, 1914, p. 305; Martin's History of Louisiana, p. 435.
11. Handy vs. Parkison, 10 La. Rep. 99.
12. See Act 97 of General Assembly (La.) 1870.
13. Wagner vs. Kenner, 2 Rob., p. 122; Robinson vs. Nott, 2 Mart. (N. S.), p. 123; Chaffraix vs. Price, 29 An., p. 176; Sun Insurance Co. vs. Board of Liquidation, 31 An., p. 177; Pugh vs. Moore, 44 An., p. 209.
14. See Act 98 of General Assembly (La.) 1870.
15. Planters Bank vs. George, 3 Martin, p. 356; Granguet vs. Prudhomme, 3 La., p. 86; Bernard vs. Vignaud, 10 Martin, p. 566; Tagiasco vs. Molinary, 9 La., p. 520.
16. *Vide*, Act of Territorial Legislature of May 4, 1805.

## HISTORY OF PHILIPPINE JURISPRUDENCE

(a) *Before the Spanish Domination.*

It is sufficient for the purposes of this work to state that before the discovery of these Islands by Magellan the Malay Customary Law prevailed here. (See Fr. Plasencia's Relación of 1580 on "Customs of the Tagalogs" translated in Blair & Robertson's "Philippine Islands," VII, 173-185. Also Relación of 1582 by de Loarca, id., V. 141-187; Judge Lobingier's article on "Primitive Malay Marriage Law," American Anthropologist, XII, 250; Judge Romualdez' article on "Rough Survey of the Prehistoric Legislation of the Philippines, Phil. Law Journal, November, 1914, pp. 149-180.)

(b) *Under Spanish Domination.*

Laws 1 (last paragraph) and 2, Title I, Book II of the *Recopilación de las Leyes de las Indias*\* say:

"And as to all matters not provided for by the laws of this compilation, the laws of the compilation and the partidas of this Kingdom of Castille shall be followed in the decision in accordance with the following law." (Law 1.)

\* This was in force in the Philippines as may be seen in the following cases: *Benedicto vs. De la Rama*, 3 Phil. 44; *Valenton et al. vs. Murciano*, 3 Phil. 540, 542, 544; *Martinez vs. Municipality of San Mateo*, 6 Phil. 6; *Alfonso vs. Commanding General*, 6 Phil. 612, 613; *Jover vs. Insular Government* 10 Phil. 536, 539, 546, 551, 553, 558; See also Tracey, "Law in the Philippines, p. 4; Wallis, Spain, Her Institution, etc., p. 44; *Roman Catholic Church vs. Municipality of Calococan*, 12 Phil. 646; *Guido vs. De Borja*, 12 Phil. 720; *Ibañez de Aldecoa vs. Insular Government*, 13 Phil. 172, 173; *Sy Joe Lieng etc. vs. Sy Quia, etc.*, 16 Phil. 183; *Municipality of Catbalogan vs. Director of Lands*, 17 Phil. 220, 221, 224, 229; *Municipality of Tacloban vs. Director of Lands*, 17 Phil. 431, 432, 433, 435, 436, 437.

"We order and command that in all cases, suits, and litigations in which the laws of this compilation do not provide for the manner of their decision and no such provision is found in special enactments which may hereafter be enacted, that then, the laws of this our Kingdom of Castille shall be followed, in conformity with the law of Toro, both with respect to the procedure to be followed in such cases, suits, and litigations, and with respect to the decision of the same on the merits." (Law 2.)

By virtue of the above were extended or otherwise deemed to have had supplementary effect in the Philippines the following:

A. OLD BODIES OR COMPILATIONS OF SPANISH LAWS:\*

(a) *Fuero Juzgo*. This is cited in *Legarda v. Valdez*, 1 Phil. 148, on the question whether banishment, provided for in said code, is a "cruel and unusual punishment" within the meaning of the constitutional phrase.

(b) *Fuero Viejo*. This law does not appear to have been cited or invoked in the Philippines.

(c) *Fuero Real*. This is cited in the case of *United States vs. Laguna*, XVII Phil. 542, on the proposition that under the Spanish system a person was not in jeopardy until there had been a final judgment in the court of last resort.

(d) *Las Leyes de Toro*. The law applicable to the legal status of natural children prior to the promulgation of the Civil Code was Law XI of Toro (*vide*, *Capistrano vs. Gavino*, 8 Phil. 135; *Llorente vs. Rodriguez*, 3 Phil. 701; *Cosio vs. Pili*, 10 Phil. 72; *Sentencia del Tribunal Supremo de España* of May 10, 1860, and September 26, 1867; *vide*, also *Mijares vs. Nery et al.*, III Phil. 197, 198, 200, 202; *Ebreo vs. Sichon*, IV Phil. 706, 707; *Buenaventura vs. Urbano*, V Phil. 2; *Araneta vs. Garrido*, V Phil. 139; *Pineda et al., vs. Gasataya*, V Phil. 140; *Siguiong vs. Siguiong et al.*, VIII Phil. 9, 10, 11; *Matias vs. Alvarez*, X Phil. 402; *Cosio et al. vs. Pili*, X Phil. 77; *Alano et al., vs. Babasá*, X Phil. 516; *Jimenez and Lelis vs. Bautista*, XII Phil. 325, 326, 327; *Sunico vs. Ramirez*, XIV Phil. 506; *Obras Pias vs. Ignacio*, XVII Phil. 48; *United States vs. Mata*, XVII Phil. 493; *Serrano vs. Aragon*, XVII Phil. 13.

(e) *Las Siete Partidas*. As regards the important subject of divorce, *Partidas* is the only law in force in the Philippines (*Benedicto vs. de la Rama*, 3 Phil. 34; *Willard's Notes on the Spanish Civil Code*, p. 16, *et seq.*). Prior to the promulgation of the Civil Code water rights and irrigation were governed by the *Partidas* at least down to 1866 (*Ker vs. Cauden*, 6 Phil. 735). *Las Siete Partidas* is otherwise cited or invoked in the following cases: *Cortez vs. Yu-Tibo*, 2 Phil. 27, 32, 33, 36, 37, 38, 40; *Perez vs. Pomar*, 2 Phil. 688; *Mijares vs. Nery*, 3 Phil. 202, 204, 205; *United States vs. Navarro*, 3 Phil. 163; *Veloso vs. Naquit*, 3 Phil. 607; *McCullough vs. Aenlle & Co.*, 3 Phil. 292; *Soriano vs. The Heirs of Roxas*, 4 Phil. 640; *Ibañez vs. Ortiz*,

\* Excluding the "Nueva Recopilación" and "Novísima Recopilación" which are but compilations of the preceding laws.

5 Phil. 327, 329; Inchausti & Co. vs. Commanding General, 6 Phil. 564, 565; Millan vs. Millan et al., 6 Phil. 270; Bishop of Cebu vs. Mangaron, 6 Phil. 295; Fuentes et al. vs. Canon et al., 6 Phil. 118; Barretto vs. City of Manila, 7 Phil. 601, 602, 603; Barlin vs. Ramirez et al., 7 Phil. 51, 52, 56, 63; Rakes vs. Atlantic, Gulf and Pacific Co., 7 Phil. 372, 379; Siguiong vs. Siguiong et al., 8 Phil. 8, 9; United States vs. Cabanag, 8 Phil. 69; Alcantara vs. Alinra, 8 Phil. 115; Ayala de Roxas vs. Case, 8 Phil. 198; Pamintuan et al. vs. Insular Government, 8 Phil. 488; Rogers vs. Smith, Bell & Co., 10 Phil. 322, 323; Matias vs. Alvarez, 10 Phil. 406; Jover vs. Insular Government et al., 10 Phil. 535, 536, 539; Legarda vs. Rocha et al., 10 Phil. 476; Alano et al. vs. Babasa, 10 Phil. 515; Concepción et al. vs. City of Manila, 11 Phil. 554; Tan Tioco vs. Lopez, 11 Phil. 595; Jimenez and Lelis vs. Bautista, 12 Phil. 324, 326; Sunico vs. Ramirez, 14 Phil. 501, 503; United States vs. Reyes, 14 Phil. 724; Sy Joc Lieng, etc. vs. Sy Quia, etc., 16 Phil. 173, 176, 177, 178, 181, 250, 251, 253, 254, 263, 264, 272, 274; Taylor vs. Manila E. R. & L. Co., 16 Phil. 27; Aranjó vs. Celis, 16 Phil. 331, 332, 333; Aldecoa & Co. vs. Warner, Barnes & Co., 16 Phil. 436; De la Peña vs. Hidalgo, 16 Phil. 467; Heirs of Jumero vs. Lizares, 17 Phil. 115; United States vs. Laguna, 17 Phil. 542; Insular Government vs. Aldecoa & Co., 19 Phil. 510; United States vs. Carlos, 16 Phil. 578; Irlanda vs. Pitargue, 22 Phil. 391; Bowler vs. Estate of Alvarez, 23 Phil. 572; Mina vs. Pascual, 25 Phil. 547; Enriquez vs. Olaguer, 25 Phil. 643; United States vs. Valera Ang Y, 26 Phil. 598.

In 1567 under the authority of Philip II the legislation immediately preceding including the

(f) *Ordenamiento de Alcalá* and the *Las Leyes de Toro* were compiled as the

(g) *La Nueva Recopilación*.—This compilation does not appear to have been cited at all in the Philippines, due perhaps to the fact that reference continued to be made to the constituent parts rather than to the compilation itself.

In 1805 another compilation appeared known as

(h) *La Novísima Recopilación*.—That this had once force in the Philippines is shown by the following cases: Orozco vs. Heirs of Hernaez, 1 Phil. 77; United States vs. Mendezona, 2 Phil. 377; Mijares vs. Nery et al., 3 Phil. 198, 202; Benedicto vs. De la Rama, 3 Phil. 39, 40; Ebreo vs. Sichon, 4 Phil. 706, 707; Araneta vs. Garrido, 5 Phil. 139; Pineda et al. vs. Gasataya, 5 Phil. 140; Bishop of Cebu vs. Mangaron, 6 Phil. 291, 296; Alcantara vs. Alinea et al., 8 Phil. 115; Capistrano vs. Gavino, 8 Phil. 139, 140; Cosio et al. vs. Pili, 10 Phil. 77; Matias vs. Alvarez, 10 Phil. 402, 403, 406; Alano et al. vs. Babasa, 10 Phil. 516; Concepción et al. vs. City of Manila, 11 Phil. 554; Veloso vs. Fontanosa, 13 Phil. 84; Sunico vs. Ramirez, 14 Phil. 506; Sy Joc Lieng, etc. vs. Sy Quia, etc., 16 Phil. 178, 181, 182, 184; Aranjó vs. Celis, 16 Phil. 332, 333; Obras Pias vs. Ignacio, XVII Phil. 48; United States vs. Mata, 17 Phil. 493.

#### B. MODERN SPANISH CODES

(a) *Penal Code of 1870*.—This code (*ante*, p. 40) appears to have been a revision of the Spanish Penal Codes of 1822 and 1850. It was extended to the Philip-

pires in September 4, 1884, and was the system of criminal law in force at the time the United States took over the Government of the Archipelago.

(b) *Code of Commerce of 1886*.—Of the two Spanish Codes of Commerce (*ante*, p. 68) that of 1829 was the only one extended to the Philippines, August 6, 1888. This was also the system of commercial law found by the Americans at the time of their occupation of the Philippines.

(c) *Ley de Enjuiciamiento Criminal*, (*ante*, p. 68).—This law did not have full force in the Philippines although it was given suppletory or explanatory effect here in January 1, 1888, (*Rakes vs. Atlantic, Gulf & Pacific Co.*, 7 Phil. 363). The "Ley Provisional para la Aplicación de las Disposiciones del Código Penal en las Islas Filipinas" was the only law of criminal procedure which acquired full force in the Philippines, (*vide*, *United States vs. Fortaleza*, 12 Phil. 473).

(d) *Ley de Enjuiciamiento Civil*, (*ante*, p. 68).—This was extended to the Philippines in February 3, 1888, (*infra*, p. 88).

### C. MISCELLANEOUS AND SPECIAL LAWS.

Not to speak of Spain's numerous special laws that were extended to the Philippines, the following are worthy of special mention: *La Ley Hipotecaria* (cited in every volume of the Philippine Reports), *Ley de Minas* (does not appear cited in Philippine Reports), *Ley de Aguas of 1866* (*Ker vs. Cauden*, 6 Phil. 735; *United States vs. San José*, 7 Phil. 606; *Palma vs. Fernandez*, 7 Phil. 155; *Ayala de Roxas vs. City of Manila*, 9 Phil. 220; *Cortes vs. City of Manila*, 10 Phil. 570; *Lunod et al. vs. Meneses*, 11 Phil. 131; *Montano vs. Insular Government*, 12 Phil. 584, 585, 590, 591; *Pascual vs. Angeles*, 18 Phil. 379; *Insular Government vs. Aldecoa & Co.*, 19 Phil. 510, 511, 513, 514; *Mantile vs. Cajucom*, 19 Phil. 571; *Bautista vs. Alarcon*, 23 Phil. 636), *Ley de Propiedad Intelectual* (*vide*, *Phil. Law Review*, March 15, 1912, p. 607), *Railway Law of 1877* (*vide*, *United States vs. Calaguas*, 14 Phil. 740), *Notarial Law of May 28, 1862*, (*vide*, *Feliciano vs. Fernandez*, 1 Phil. 178), *Law of Foreigners for Ultramarine Provinces of July 4, 1870*, (*vide*, *In re Bosque*, 1 Phil. 92), *Spanish Code of Military Justice* (*vide*, *syllabus*, p. 41, *United States vs. Sweet*, 1 Phil. 19 and 20) *Contencioso-Administrativo Law of September 13, 1888*, (*vide*, *Roura et al. vs. Insular Government*, 8 Phil. 231, 240).

### UNDER AMERICAN DOMINATION

Chief Justice Marshall in the case of *American Insurance Company vs. Canter* (1 Pet. U. S. 511, 542), in speaking of the acquisition of Florida by the United States, said:

On such transfer of territory it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law which may be denom-

inated political is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the State.

On the Capture of Manila by the United States Army on the 13th of August, 1898, General Merritt, commander of that Army, issued on August 14, 1898, a proclamation which contained, *inter alia*, the following statement:

3. 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.

Accordingly, the Spanish laws in force in the Philippines at the time of her acquisition by the United States in so far as they relate to "the possession, use, and transfer of property, and are designed to secure good order and peace in the community, and promote its health and prosperity, and are strictly of a municipal character" (Mr. Justice Field in *Chicago Rock Island and Pacific Railway Co. vs. McGlenn*, 114 United States 542, 546; *vide*, also *Chew vs. Calvert et al.*, Walker's Reports, Miss. 54, 55, 56; 22 Cyc., p. 1729; Lord Mansfield in *Campbell vs. Hull, Cowp.*, 209; 1 Op. Atty. Gen., Porto Rico, p. 155; *United States vs. Percheman*, 7 Pet. 57; *More vs. Steinbach*, 127 U. S. 70, 81; *Philippine Sugar Estates Development Co. vs. United States*, 39 Ct. Cls., 225, 245; 1 Lewis Sutherland Statutory Construction, sec. 2; 5 Am. J. Of. Int. Law, January, 1911, p. 66), continued in force unaffected by the transfer of sovereignty; in particular, the civil code, (with *Las Siete Partidas re cause for divorce*) (July 31, 1889) penal code (September 4, 1884), mortgage law (July 14, 1893), code of civil procedure (Feb. 3, 1888), code of criminal procedure (September 4, 1884), commercial code (August 6, 1888), law of mines (1859), law of waters (August 3, 1886), copyright law, (1879), railway law (1877).

#### (a) MILITARY OCCUPATION

The first step taken by the Americans towards the pacification of the Philippine Islands was the inauguration of a military government (*vide*, Instructions of President McKinley to General Merritt, dated May 19, 1898). As military authority, when exercised over a conquered territory, includes executive, judicial, and legislative powers (*vide*, Report of Secretary of War Root, 1901), we find that, during the time the Philippine Islands was under military occupation, several important laws in the form of general orders were passed. The author will not undertake to enumerate the long list of general orders promulgated. The following are, for our purposes, important:

General Orders No. 20 of May 29, 1899, reestablishing the Supreme Court of the Philippine Islands practically on the same line of Spanish organization.

General Orders No. 21, series of 1899, providing for the reopening of the Court of First Instance and justices of the peace courts in the city of Manila.

General Orders No. 29, series of 1899, abolishing the office of procurador and providing for the qualifications, powers, and duties of attorneys-at-law.

General Orders No. 68, series of 1899, providing for the liberty of marriage never before enjoyed by the Filipinos. This is said to be by far one of the most important laws enacted by the Military authorities (Phil. Law Review, May, 1914, p. 296) and is common-law in many important particulars.

General Orders 58, series of 1900, providing for a new criminal law of procedure. Though merely designed to amend the Spanish criminal procedure then in force it in reality introduced a new system of procedure American in origin and structure. It did away with the unjust and arbitrary provisions which polluted the old system of Spanish criminal procedure.

(b) FROM THE TIME OF THE ESTABLISHMENT OF CIVIL GOVERNMENT

President McKinley in his instructions to the Taft Commission, through the Secretary of War, said:

Beginning with the first day of September, 1900, the authority to exercise, subject to my approval, through the Secretary of War, that part of the power of Government in the Philippine Islands which is of a legislative nature is to be transferred from the Military Governor of the Islands to this commission, to be thereafter exercised by them in the place and stead of the Military Governor, under such rules and regulations as you shall prescribe, and until the establishment of the civil central government for the Islands contemplated in the last foregoing paragraph, or until Congress shall otherwise provide. \* \* \* \*

The Commission will also have power, during the same period, to appoint to office such officers under the judicial, educational, and civil-service systems, and in the municipal and departmental governments as shall be provided for.

From the time above-mentioned up to this day (December 25, 1914), about twenty-four hundred and twenty-six laws have been enacted by the Philippine Commission and the Philippine Legislature, the most important of which, for our purposes, are:

Act No. 75 providing for a remedy against judgments obtained in Court of First Instance by fraud, accident, or mistake.

Act No. 81, repealing acts, codes, and orders relating to the challenging of judges, magistrates, justices of the peace, and defining the disqualifications of judges, magistrates, justices of the peace, assessors, and referees.

Act No. 82 providing for "the organization of municipal governments in the Philippine Islands."

Act No. 83 providing for "the organization of provincial governments in the Philippine Islands."

Act No. 98 "to regulate commerce in the Philippine Islands." (Common Carriers Law.)

Act No. 136, providing for the organization of courts in the Philippine Islands. The United States Philippine Commission saw the necessity for a more enlightened and efficient system of judicature than that which existed under the Spanish régime. This led to the enactment of the Act. (Ill. L. Rev., June, 1914, p. 82.)

Act 190 providing for a Code of Procedure in civil actions and special proceedings in the Philippine Islands. The Spanish Code of Civil Procedure provided for appeals from the rulings of the court on many incidental questions and issues. As a result, the procedure in civil actions was necessarily slow and tedious. Soon after the Philippine Commission commenced its legislative work, it began to give attention to the subject of civil procedure, and on August 7, 1901, enacted the Code (Ill. L. Rev., June, 1914, pp. 81 and 82.)

Act 277 "defining the law of libel and threats to publish a libel, making libel and threats to publish a libel misdemeanors, giving a right of civil action therefor, and making obscene or indecent publications misdemeanors." (Libel Law.)

Act 292 "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 punishment therefor."

Act 519 "defining vagrancy and providing for punishment therefor."

Act 624 "prescribing regulations governing the location and manner of recording mining claims, and the amount of work necessary to hold possession of a mining claim, under the provisions of the Act of Congress, approved July first, nineteen hundred and two."

Act 666 "defining property in trade-marks and in trade-names and providing for the protection of the same, defining unfair competition, and providing remedies against the same, providing registration for trade-marks and trade-names, and defining the effect to be given to registration under the Spanish royal decree of eighteen hundred and eighty-eight relating to the registration of trade-marks."

Act 1459 "providing for the formation and organizations of corporations, defining their powers, fixing the duties of directors and other officers thereof, declaring the rights and liabilities of shareholders and members, prescribing the conditions under which such corporations may transact business, and repealing certain articles of the Code of Commerce and all laws or parts of laws in conflict or inconsistent with this Act." (Corporation Law.)

Act 1508 "providing for the mortgaging of personal property and for registration of the mortgages so executed." (Chattel Mortgage Law.)

Act 1697 "authorizing the appointment of commissioners to make official investigations and fixing their powers, for the payment of witness fees, and for the punishment of perjury in official investigations." (Perjury Law.)

Act 1773 providing for the public prosecution of the crimes of *adulterio, estupro, raptó, violación, calunnia*, and *injuria* and abolishing "the right of pardon by the aggrieved party in such cases, to provide for a special civil action for damages therein, and for other purposes."

Act 1956 "providing for the suspension of payments, the relief of insolvent debtors, the protection of creditors, and the punishment of fraudulent debtors." (Insolvency Law.)

Act 2031 providing for a "Negotiable Instruments Law."

Act 2235 "providing for the registration of patents and patent rights in the Philippine Islands, and for the protection of the same."

(c) THE SO-CALLED ORGANIC LAWS OF THE PHILIPPINES

The term organic laws of the Philippine Islands embraces the treaties with Spain, the instructions and orders of the President, and the Acts of Congress having special reference to the Philippine Islands, *intra alia*:

Treaty of Paris.—Treaty of peace 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 of November 7, 1900, for the cession of outlying islands of the Philippines.

The President's Instructions to the Philippine Commission dated April 7, 1900.

Order of the President creating the Office of Civil Governor for the Philippine Islands dated June 21, 1901.

Act of Congress of March 8, 1902.—An Act temporarily to provide revenue for the Philippine Islands, and for other purposes, as amended.

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."—An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes, as 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, as amended.

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.

Act of Congress of March 3, 1905.—An Act to revise and amend the tariff laws of the Philippine Islands, and for other purposes (following sections 14 and 15 of this Act is published Act No. 1535 of the Philippine Commission abolishing tonnage dues on vessels coming from foreign ports to ports of entry in the Philippine Islands).

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.

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 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 May 11, 1908.—An Act to increase the membership of the Philippine Commission by one member, and for other purposes.

Act of Congress of August 5, 1909.—An Act to raise revenue for the Philippine Islands, and for other purposes. (Tariff Law of 1909.)

Act of Congress of March 4, 1909.—An Act to amend and consolidate the Acts respecting copyright.

Act of Congress of July 14, 1910.—An Act providing for the quadrennial election of members of the Philippine Legislature and Resident Commissioners to the United States, and for other purposes.

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.

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.)

## PRESENT STATE OF PHILIPPINE JURISPRUDENCE

### A. PRIVATE SUBSTANTIVE LAW

1. *In Civil Matters.*—Not to speak of Spanish special substantive laws, the private law in civil matters now in force in the Philippines is mainly embodied in the

Spanish Civil Code. Act 190, however, though a procedural law, contains many substantive provisions and has greatly modified the Civil Code in many of its important provisions. To this must be added General Orders No. 68, several Acts of Congress, especially that of July 1, 1902, and numerous Acts of the Philippine Commission and of the Philippine Legislature, e. g., Acts 624 and 1508.

2. *In Commercial Matters.*—Similarly the Spanish Code of Commerce of 1866 continued in force (*vide, ante*, pp. 79, 80). With the subsequent enactment, however, of the Corporation Law (1459), the Insolvency Law (1956), both of which are of American origin, the Negotiable Instruments Law (2031) which is a copy of that framed by the American Commissioners on Uniform Legislation, Warehouse Receipts Law, which is likewise Anglo-American in its underlying principles, and with the enactment of a new American insurance law (2427), the present Spanish Code of Commerce, with the exception of those provisions relating to merchants in general and partnerships, may now be said to be of little practical service in the Philippines.

3. *Special and Miscellaneous.*—"La Ley Hipotecaria" (Mortgage Law) of 1861 has almost been abrogated and superseded by Act No. 496 of Philippine Commission as amended. La Ley de Minas of 1859 has been superseded by Act of Congress of July 1, 1902, and Act 624, as amended of the Philippine Commission. La Ley de Aguas of 1866 is still in force in the Philippines (Ker vs. Cauden, 6 Phil. 735). In the matter of copyright, patents, and trade-marks, recourse must now be had to the Acts of Congress and of the Philippine Commission and the Philippine Legislature (*vide, ante*, p. 68); also Willard's Notes to the Spanish Civil Code, pp. 29-40; Op. Atty. Gen., III, 453, IV, 8; United States vs. Yam Tung Wang, 21 Phil. 67, 69).

#### B. CRIMINAL LAW

The system of Criminal Law found in vogue by the Americans at the time of their occupation of the Philippines was embodied in the present penal code of the Philippines. Almost from the beginning of the establishment of civil government, many provisions of the code have been either amended or entirely repealed and new offenses created. Acts 277 (Libel Law), 292 (Treason, Insurrection, and Sedition Law) 519 (Vagrancy Law), 1697 (Perjury Law), 1740 (Misappropriation of Public Funds Law), 1757 (Gambling Law), 1761 and 238 (Opium Laws), 1773 (*vide, ante*, p. . . .) and 2142 (modifying art. 11 of Penal Code), are examples.

#### C. PROCEDURE

1. *Civil.*—So great was the defect of the Ley de Enjuiciamiento Civil (*ante*, p. 82) that when the American Government undertook to enact a new Code of Civil Procedure (190) it thereby repealed "all codes, statutes, acts, decrees, and orders and parts thereof heretofore promulgated, enacted, or enforced in the Philippine Islands." (Sec. 795.) Act 190 embodies the main features of the American reformed procedure of New York and California. (*Vide, ante*, p. 82.)

2. *Criminal.*—As has already been observed (*ante*, p. 79) no code of criminal procedure ever acquired full force in the Philippines, although the "Ley de Enjuicia-

miento Criminal" was given suppletory effect in the Philippines (*ante*, p. 79). The Ley Provisional was the only body of law on criminal procedure which ever acquired full force in the Philippines. With the promulgation of what may be called an American Code of Procedure (G. O. 58), the remaining provisions of the old Spanish codes are of little or no practical value, although some of their provisions are still in force. (*Vide, ante*, p. 79; *United States vs. Fortaleza, ante*, p. 79.)

#### D. CONSTITUTIONAL AND ADMINISTRATIVE LAW

By the transfer of sovereignty over these Islands from Spain to the United States, the old form of Colonial Government was abolished, and a purer system of government established in its place. This government established by Act of Congress of July 1, 1902, was constructed wholly on the basis of common-law principles and on the same general lines as the Territorial Governments in all the other Territories of the United States. As the "Bill of Rights" of the Filipino people, it can only be construed and understood as a common-law document. For the organization and administration of Philippine Government recourse must likewise be made to the Acts of the Philippine Commission and of the Philippine Legislature.

As may be seen, although the long list of Spanish codes and laws once prevailed and many of which still prevail in the Philippines, every one of them has either been totally abrogated or modified by subsequent legislation. Even the Spanish Civil Code, which in the language of Judge Lobingier (*Philippine Law Review*, March 15, 1912, p. 607) "seems destined to continue as the basis of Philippine substantive law," has been amended in many important particulars and common-law elements allowed to creep in. In the field of criminal law the many changes introduced by the Americans are more marked and the common-law elements more noticeable. Our present system of pleading, practice, and evidence, both civil and criminal, is likewise the rationalized and simplified form of common-law pleading, practice, and evidence. For our constitutional and administrative law recourse must be had principally to the Act of Congress of July 1, 1902, whose many provisions for the protection of individual rights can even be traced back to the time-honored "Magna Charta" and "Bill of Rights" of the English people.

Reduced, therefore, to a simple form of outline or syllabus, here is presented the following:

#### HISTORICAL OUTLINE OF PHILIPPINE JURISPRUDENCE.

- |                               |                      |   |
|-------------------------------|----------------------|---|
| I. BEFORE SPANISH DOMINATION. |                      | { a) Malay Customary Law prevailed. (1)                             |
|                               |                      | { b) Inter-relations governed by customs. (2)                       |
| II. UNDER SPANISH DOMINATION. | A. Old Compilations. | 1. Fuero Juzgo. {   |
|                               |                      | { a) <i>Vide</i> , Syllabus, <i>ante</i> , p. 38.                   |
|                               |                      | { b) Extended to Philippines by <i>Leyes de las Indias</i> in 1530. |
|                               |                      | { c) Legal force in the Philippines. (3)                            |

HISTORICAL OUTLINE OF PHILIPPINE JURISPRUDENCE.—Cont.

<p>II. UNDER SPANISH DOMINATION. Continued.</p>	<p>A. Old Compilations. Continued.</p>	<p>2. Fuero Viejo.</p>	<p>a. <i>Vide</i>, Syllabus, <i>ante</i>, p. 38. b) Extended to Philippines by Leyes de las Indias in 1530. c) Legal force in the Philippines. (4)</p>
		<p>3. Fuero Real.</p>	<p>a) <i>Vide</i>, Syllabus, <i>ante</i>, p. 30. b) Extended to Philippines by Leyes de las Indias in 1530. c) Legal force in the Philippines. (5)</p>
		<p>4. Las Siete Partidas.</p>	<p>a) <i>Vide</i>, Syllabus, <i>ante</i>, p. 39. b) Extended to Philippines by Leyes de las Indias in 1530. c) Legal force in the Philippines: only law in force in the Philippines—<i>re</i> cause for divorce (6); governed water rights and irrigation up to 1866. (7) d) Otherwise invoked in. (8)</p>
		<p>5. Ordenamiento de Alcalá.</p>	<p><i>Vide</i>, syllabus, <i>ante</i>, p. 93.</p>
		<p>6. Leyes de Toro.</p>	<p>a) <i>Vide</i>, syllabus, <i>ante</i>, p. 39. b) Extended to Philippines by Leyes de las Indias in 1530. c) Legal force in the Philippines: Law applicable to legal status prior to promulgation of Civil Code was Law XII of Toro. (9)</p>
		<p>7. Nueva Recopilación.</p>	<p>a) <i>Vide</i>, syllabus, <i>ante</i>, p. 39. b) Not cited in the Philippines—Reason—<i>vide</i>, <i>ante</i>, p.</p>
		<p>8. Recopilación de las Leyes de Indias.</p>	<p>a) <i>Vide</i>, syllabus, <i>ante</i>, p. 39. b) Legal force in the Philippines. (10)</p>
		<p>9. Novísima Recopilación.</p>	<p>a) <i>Vide</i>, syllabus, <i>ante</i>, p. 40. b) Legal force in the Philippines. (11)</p>

## HISTORICAL OUTLINE OF PHILIPPINE JURISPRUDENCE.—Cont.

- |  |   |   |  |  |
|--|---|---|--|--|
| II. UNDER SPANISH DOMINATION.<br>Continued.  | B. Modern Spanish Codes. (12)   | a. Penal Code of 1870: Extended to Philippines, September 4, 1884.  |  |  |
|  |   | b. Code of Commerce of 1886: Extended to Philippines, August 6, 1888.   |  |  |
|  |   | c. Codes of Procedure. <table border="0" style="margin-left: 20px;"> <tr> <td data-bbox="880 425 1182 560">1. Ley de Enjuiciamiento criminal of 1872 given supplementary effect in Philippines. January 1, 1888. (14)</td> </tr> <tr> <td data-bbox="880 569 1182 666">2. Ley de Enjuiciamiento Civil of 1856: extended to Philippines, February 3, 1888.</td> </tr> </table> | 1. Ley de Enjuiciamiento criminal of 1872 given supplementary effect in Philippines. January 1, 1888. (14) | 2. Ley de Enjuiciamiento Civil of 1856: extended to Philippines, February 3, 1888. |
|  |   | 1. Ley de Enjuiciamiento criminal of 1872 given supplementary effect in Philippines. January 1, 1888. (14)  |  |  |
| 2. Ley de Enjuiciamiento Civil of 1856: extended to Philippines, February 3, 1888. |   |   |  |  |
| d. Civil Code: Extended to Philippines, July 31, 1889.                             |   |   |  |  |
| C. Special Spanish Substantive Laws.   | a. Ley Hipotecaria.   |   |  |  |
|  | b. Ley de Minas.  |   |  |  |
|  | c. Ley de Aguas. (13)   |   |  |  |
|  | d. Ley de Propiedad Intelectual. (15)                                     |   |  |  |
| D. Special Laws.   | a. Railway Law of 1877. (16)  |   |  |  |
|  | b. Notarial Law of 1862. (17)   |   |  |  |
|  | c. Law of Foreigners for Ultramarines Provinces. (18)                     |   |  |  |
|  | d. Spanish Code of Military Justice. (19)                                 |   |  |  |
|  | e. Contencioso-Administrativo Law. (20)                                   |   |  |  |
|  | f. Contencioso-Administrativo Procedure. (21)                             |   |  |  |
| III. UNDER AMERICAN DOMINATION.  | 1. Spanish municipal laws continued in force. (22)                        |   |  |  |
|  | 2. Under Military Occupation:   | Laws in form of General Orders passed, e. g.—G. O. 68, series of 1899 and G. O. 58, series of 1900.   |  |  |
|  | 3. From the time of establishment of civil government up to present time. | a. Acts of the Philippine Commission. (23)  |  |  |
|  |   | b. Acts of the Philippine Legislature. (24)   |  |  |
|  | 4. Organic Laws of the Philippines: <i>Vide, ante</i> pp. 65-68.          |   |  |  |
| 5. Present State of Philippine Jurisprudence. (Blended System)                     | a. Constitutional and Administrative.                                     | Treaty of Paris, President's Instructions to the Philippine Commission.   |  |  |
|  |   | Acts of Congress, in particular, July 1, 1902, as amended, January 20, 1903; May 11, 1908; July 14, 1910 and March 23, 1912.<br>Acts of Philippine Commission and Philippine Legislature, e. g. Acts 82, 83, etc.   |  |  |

HISTORICAL OUTLINE OF PHILIPPINE JURISPRUDENCE.—Cont.

III. UNDER AMERICAN DOM- INATION. Continued.	5. Present State of Philippine Juris- prudence. (Blended System) Continued.	a. Civil.	1. Spanish Civil Code of 2. Acts of the Philip- pine Commission. 3. Acts of the Philip- pine Legislature.	
			b. Private.	1. Spanish Code of Commerce of 1886. 2. Act of Congress of Feb. 20, 1905, May 4, 1906; Mch. 2, 1907; Feb. 18, 1907; Mch. 4, 1909.
				b. Commer- cial.
		c. Procedure.	1. Civil.	Act 190 of Philippine Commission, as amended.
			2. Criminal.	a. Act. of Congress of Feb. 9, 1903. b. G. O. 58, as amended. c. Ley Provisional. (25) d. Ley de Enjuicia- miento Criminal of 1872.
d. Criminal Law.	a. Spanish Penal Code of 1870. b. Acts of Philippine Commission e. g. Acts 277, 519, 1697, 1773, etc. c. Acts of Philippine Legislature; e. g. 2298, 2212, 2381, etc.			
e. Special.	1. Mortgage.	Mortgage Law, (Maura); Act 496 of Phil. Com.		
	2. Spanish Law of Waters, August 3, 1866. (26)	3. Mining Law.	Act of Congress July 1, 1902, as amended. Act 624 as amended.	

## HISTORICAL OUTLINE OF PHILIPPINE JURISPRUDENCE.—Cont.

III. UNDER A M E R - I C A N D O M - I N A T I O N . Continued.	5. Present State of Philip- pine Juris- prudence. (Blended System) Continued.	e. Special. Continued.	4. Copyright. (27)	1. Treaty of Paris. 2. Act 666 of Phil. Com. as amended.
			5. Trade Marks.	
			6. Patents.	

## REFERENCES

1. *Vide*, Fr. Placenciás Relación of 1580 on "Customs of the Tagalogs" translated in Blair and Robertson's "Philippine Islands," Vol. VII, 173-185; Relación of 1582 by de Loarca, id., Vol. V, 141-187; Judge Lobingier's Article on "Primitive Malay Marriage Law," American Anthropologist, XII, 250; Judge Romualdez Article on "Rough Survey of the Philippines," Phil. L. Review, November, 1914, pp. 149-180.
2. *Id.* (1).
3. *Vide*, Case cited, *ante*, p. 53.
4. *Vide*, Case cited, *ante*, p. 53.
5. *Vide*, Case cited, *ante*, p. 53.
6. *Benedicto vs. De la Rama*, 3 Phil. 34; Willard's Notes to Civil Code, pp. 16 *et seq.*
7. *Ker vs. Cauden*, 6 Phil. 735.
8. *Vide*, *ante*, pp. 54, 55.
9. *Capistrano v. Gavino*, 8 Phil. 135; *Llorente vs. Rodriguez*, 3 Phil. 701; *Cosio vs. Pili*, 10 Phil. 72; Sentencia del Tribunal Supremo de España of May 10, 1860, and September 26, 1867; *vide*, also *ante*, pp. 53 and 54.
10. *Vide*, Cases cited, *ante*, p. 52 and notes.
11. *Vide*, Cases, cited, *ante*, p. 56.
12. *Vide*, Judge Lobingier's Article of "Spanish Law in the Philippines," Phil. Law Review, March 15, 1912.
13. *Ker vs. Cauden*, 6 Phil. 735 and cases cited *ante*, pp. 57 and 58.
14. *Vide*, Tracey J., in *Rakes vs. Atl. Gulf and Pacific Company*, 7 Phil. 363.
15. 4 Atty. Gen. 456.
16. *United States vs. Calaguas*, 14 Phil. 740.
17. *Feliciano vs. Fernandez*, 1 Phil. 178.
18. *In re Bosque*, 1 Phil. 92.
19. *United States vs. Sweet*, 1 Phil. 19, 20.
20. *Roura et al. v. Insular Government*, 8 Phil. 231, 240.
21. *Id.* (19).
22. *American Insurance Co. vs. Canter*, 1 Pet. and cases cited, *ante*, pp. 59-60.
23. Vols. I to VI (Public Laws), (Acts 1 to 1800, inc.), and other Acts *re* Non-Christian provinces.
24. Vols. VII, VIII, (Public Laws), (Acts 1801-2191) and 2192 to
25. *United States vs. Fortaleza*, 12 Phil. 478.
26. *Ker vs. Cauden*, 6 Phil. 735.
27. Willard. Notes on the Spanish Civil Code, pp. 39, 40; III, Op. Atty. Gen., III, 453; IV, 8; Op. Atty. Gen. *United States*, XXII, 68; XXV, 175; *United States vs. YamTung Wang*, 10 Official Gazette, 13; Op. Atty. Gen., October 3, 1913; Opinion Code Committee, Oct. 16, 1913.

## BRIEF COMPARATIVE STUDY OF PHILIPPINE JURISPRUDENCE AND THAT OF LOUISIANA—LESSON PREDICATED

Conquerors like the Spaniards, the Dutch, the Portuguese, the French, the Englishmen, and the Germans, in their unbounded course of conquest and national aggrandizement, have always carried their respective systems of law with them into the territories they have conquered and the colonies they have founded. In many instances the law of the conquered territory has been allowed to remain unaltered. The reason for this is, as Mr. Bryce has remarked, "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." (Selected Essays in Anglo-American Legal History, Vol. I, p. 593.)

Let us take for example the case of Quebec or Lower Canada. The first settlement in what is now called the Dominion of Canada was made by Jacques Cartier, a French navigator. Canada remained under French control for about one hundred and fifty years. In 1759, the English army under Wolfe captured Quebec. The English conquest of Canada was completed in 1760. By the treaty of 1763, the entire territory was transferred to England. The question naturally presented itself as to what should be done with the legal institutions found in vogue in the new possessions. A part of the vast domain was inhabited by French people who had been living for generations under the laws and ordinances of France and the Customs of Paris. The English Government acted justly and wisely. The principles of English law were introduced in criminal matters (by Statute of 14 George III, Chapter 83), but private law in civil matters was left undisturbed. It consequently resulted that in Canada that portion which had been largely settled, and which is now called the Province of Quebec, retained its system of private law in civil matters derived from France; while the portion of territory lying farther west, or Upper Canada, adopted the English law as the basis of its institutions.

The history of Louisiana presents a far more striking example. For more than thirty years before the purchase of Louisiana territory, this vast domain had been a Spanish colony. Although in the early history of the French settlement, the laws and ordinances of France and the Customs of Paris had been extended to it, it is, however, to be borne in mind that the difference between the law of France and the law of Spain when applied to colonial conditions was not great. When Louisiana territory was acquired by the United States in 1803, the same question which arose in the case of Lower Canada presented itself: What should be done, in the legal way, with this new possession? It was first considered, that no State carved out of this purchase should ever be admitted to the Union with Spanish system of jurisprudence. In fact, in all other States formed from the purchase, the civil law was early expressly abrogated, and the common law of England established in its place. But the territory of Orleans had a considerable population which had been living

for about a century under a system of private law in civil matters derived from France and Spain. The United States justly and wisely allowed the private law in civil matters to remain unchanged.

What lesson may be learned by the Philippine Islands from this phase of the legal history of Louisiana is not difficult to determine. By reference to the syllabi here presented (*vide, ante*, pp. 65-69; 73-74) and a close comparative study of the legal histories of the two countries, we find: that Louisiana, like the Philippine Islands was once a Spanish possession where some of the old Spanish codes or bodies of laws were in vogue. Although by the charter of Antoine Crozat, the laws, edicts, and ordinances of France once prevailed in Louisiana, (*vide, ante*, p. 73) they were, at least soon after the transfer of that country to Spain by the secret treaty between France and Spain in 1763, overthrown by the proclamation of the Spanish Governor of Louisiana, Count O'Reilly, and the Spanish laws took their place. (*Vide, ante*, p. 73.) For instance, the *Fuero Juzgo*, *Fuero Viejo*, *Fuero Real*, *Las Siete Partidas*, *Recopilación* of Castille, and *Recopilación de las Leyes de Indias* were in force in Louisiana (22 American Law Review, pp. 889-902, *ante*, p. 73; as to Partidas *vide* Hallet vs. Collins, *ante*, p. 73), and they were there extended almost at the same time they were made to apply to the Philippines (*vide, syllabi, ante*, pp. 86 and 87). These Spanish laws continued to have force in Louisiana even for a considerable time after the acquisition and organization of Louisiana into territory of the United States (*vide, ante*, p. 71 and *syllabus*, p. 74). At the time therefore the United States acquired Louisiana, the laws and system of jurisprudence found in force in the acquired territory were in the main similar to those found in the Philippine Islands by the Americans at the time of her acquisition by the United States. And not only was there such similarity, but by reference to the syllabi given (*ante*, pp. 73, 86, 87), it will be seen that the Philippine Islands had a far more complete and perfect system of law than Louisiana. While at the time of the acquisition of Louisiana by the United States the Spanish laws were found scattered here and there among the old Spanish compilations and royal cédulas (*vide, ante*, p. 70, *syllabus*, p. 73), the Spanish laws found in vogue in the Philippine Islands at the time of Dewey's victory in Manila Bay which signalized the beginning of a new era in the legal history of these Islands, were mainly embodied in the modern Spanish codes (*vide, ante*, pp. 78, 79, *syllabus, ante*, p. 88).

In the case of Louisiana the United States left the task of altering the laws to the people, as far as there was no conflict between them and the Constitution of the United States or the fundamental principles of legal right of the American people. It was only in the line of criminal law, procedure, and commercial law that changes were chiefly directed (*vide, syllabus, ante*, p. 75). No attempt was ever made by the United States to abrogate or change the private law of Spain in civil matters, not only for the reason stated by Mr. Bryce that "law is a tenacious plant even harder to extirpate than language" but because the civil-law system has become interwoven with the social life of the people. The Philippine Islands has been a civil-law country

for a period of more than three centuries. Should she not continue to be so? It is here most deferentially submitted that the course pursued by the United States in the case of Louisiana should be followed by her with reference to the Philippine Islands. To what extent will assimilation take place in these Islands, whether as in the case of California, Texas, Florida, and New Mexico, and other States of the American Union, Anglo-American legislation will entirely supersede the Spanish laws in force in these Islands, depends of course upon the legislative policy of America in these Islands as a possession "appurtenant and belonging to the United States" (*Downes vs. Bidwell, supra*, p. 28). This is understood. It is, however, hoped that when 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 rights" that the United States, through her late President has, once and for all, determined upon a rather conservative and at the same time constructive policy in dealing with Philippine laws and institutions. It is therefore expected that no effort would be made by the United States to change the general system of law in the Philippine Islands in so far as it concerns civil matters. Whatever may be the fate of the Philippine Islands, whether destined to become a power or to remain a mere colonial possession of the United States, the writer believes that she should, at least in so far as her private law in civil matters is concerned, continue to be a civil-law country. Legally and socially, the civil-law system has become so interwoven with the life and proprietary interests of the inhabitants of these Islands that to introduce an entirely new legal system would be destructive of an institution under which the Filipino people have been bred and to which they have been accustomed for a period of more than three hundred years. It will not perhaps be an exaggeration to state that so far as private law in civil matters is concerned there is no system on the face of the earth better adapted to the customs, traditions, and institutions of the people of these Islands than the civil law (*vide, Howe's Studies in the Civil Law*, pp. 147-8).

No doubt, the present state of legislation in the Philippines is to be deplored. With the advent of the Americans came new ideas, new complications, new elements, good and bad. Flowing from two great streams of the law, the civil law and the common law, it is but natural that the meeting and blending of the two systems (Review of Reviews, September, 1905; Phil. Law Review, May, 1914; Phil. Law Journal, August, 1914) should cause confusion and chaos in our legal institutions. But our experience is not unique in this respect. Louisiana is our example. Her history is our guide. First a French colony, then Spanish, then once more French, and then ultimately transferred to the dominion of the United States, the sudden grafting of Anglo-American institutions upon an older system of law, the diversities of languages, the differences of customs, religions, and institutions, (*vide, ante*, pp. 70, 71), likewise precipitated perplexity and confusion upon the inhabitants of Loui-

siana of 1803. Louisiana, however, by retaining her old-system of law and assimilating whatever principles of the Common Law were consistent with the history and traditions of the people, and without consenting at the same time to give up whatever valuable idea had been developed on the past has, slowly, it is true, but surely at last, evolved a unique and commendable system of law—the blended system. As has been said, at the time the vast region of Louisiana came under the dominion of the United States in 1803, it was largely inhabited by a people accustomed to the French and Spanish laws (*vide, ante*, p. 73) which are in turn derived from the Roman Law. The private law was allowed to remain unaltered by the conquerors who nevertheless introduced some of their laws. The final outcome was the amalgamation of the two systems of law which in the beginning led to difficulties and confusion but in the end productive of beneficial results.

May the Philippine Islands profit by this example of Louisiana! History teaches, it is true, that different peoples or even the same people in different stages of advancement, are not to be governed by the like modes and forms. But the legal history of Louisiana has a deep value and abiding interest to us. It presents a regularly developed series of causes and consequences and gives an example of the practicability of a more perfect fusion of the two great systems of law in the Philippine Islands, and at the same time and after all, of the necessity of the continuity of a system of law, the civil law, which lies deep at the basis of social life of a people—**THE FILIPINO PEOPLE.**

#### CONCLUSION

I. Predicated, therefore, upon the constitutional and legal history of Louisiana, the United States can, under the Law of Nations and the Constitution of the United States, incorporate the Philippine Islands into the United States as a State thereof. As to the advisability and expediency of such incorporation, the writer has elsewhere expressed his opinion (*vide, ante*, pp. 25, 26).

II. Predicated upon the history of Louisiana jurisprudence proper, it is submitted that the Philippine Islands should remain a civil-law country, meaning, that her private law in so far as concerns civil matters should continue to be based upon the Roman Law, as this law is represented by the Spanish codes in the Philippines.

The blending of the two great systems of law has already taken place in the Philippine Islands. We can not now evade the tendency to amalgamate into one body the laws of the conquerors and the laws of the conquered. But much more in the matter of development and perfection of our unique legal system remains to be achieved. As in the present State of Louisiana, the Anglo-American law has to mould our criminal and commercial laws as well as the law of evidence. The development of the law of corporations, damages, and procedure must largely be influenced by the Anglo-American law; while the law of persons and domestic relations, of property, succession, obligations, and in general, the private law, or the law governing

private persons, their inter-relations, property, and obligations must remain based upon the civil law. But alas! every principle of law has to be chosen and adopted with care. "The energy and love with which the people hold to and assert their laws, are determined by the amount of toil and effort which it cost them to obtain them. Not mere custom, but sacrifice, forges the strongest bond between a people and their principles of legal right; and God does not make a gift of what it needs to the nation he wishes well, nor does he make the labor necessary for its acquisition easy, but difficult." (Von Ihering, *Struggle for Law*, Lalor's Ed., p. 19.)