PHILIPPINE LAW JOURNAL

Vol. III JANUARY, 1917 No. 6

ORIGIN AND DEVELOPMENT OF PHILIPPINE JURISPRUDENCE

By Antonio E. Cuyugan, LL. B.

PART I

INTRODUCTION

DEFINITION, ORIGIN, AND SCOPE OF THE TERM

Origin of the Word "Jurisprudence."—For the beginnings of the science which reduces legal phenomena to order and coherence we are indebted to the Romans. It was they who created this word, and it was also from their language that the science derived its name. Thus, Professor Holland, in his treatise on "jurisprudence," says: " 'Jurisprudentia,' in its original use, was merely one among several phrases signifying a knowledge of the law, just as 'rei militaris prudentia' signifies a knowledge of the conduct of warfare." (Holland's Jurisprudence, p. 2.)

Jurisprudence Defined.—There are so many conflicting definitions of this term that an attempt to reconcile them would be a futile endeavor. But in order to have an idea of what it is, we shall see a few definitions by renowned authorities:

> "Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia." (Ulpian's Dig., i., I., 10.)*

Bouvier defines "jurisprudence" as "the science of the law. The practical science of giving a wise interpretation to the laws and making a just application of them to all cases as they arise." (2 Bouvier's Law Dic. 62.)

Black defines "jurisprudence" as "the philosophy of law, or the science which treats of the principles of positive law and legal relations." (Black's Law Dic., p. 674.)

From these definitions, and after an analytical study of each and every one of them, we find that the word "jurisprudence" conveys two main ideas, to wit: (1) that it is a science of the law, and (2) that it is a practical science. "By science, in the first definition, is understood that connection of truths which is founded on principles either evident in themselves or capable of demonstration,—a collection of truths of the same kind, arranged in methodical order. In the latter sense, it is the habit of judging the same questions in the same manner and by this course of judgments forming precedents." (See 2 Bouvier's Law Dic., p. 62.)

*Jurisprudence is the knowledge of things human and divine, the science of the just and unjust.

Jurisprudence a Formal Science.—Jurisprudence is more of a formal than a material science. It is not directly concerned with questions of moral or political policy, for they fall under the province of ethics and legislation; but when a new or doubtful case arises to which two different rules seem, when taken generally, to be equally applicable, it may be, and often is, the function of jurisprudence to consider the ultimate effect which would be produced if each rule were applied to an indefinite number of similar cases and to choose that rule which, when so applied, will produce the greatest advantage to the community. "It is not the material science of those portions of the law which various nations have in common, but the formal science of those relations of mankind which are generally recognized as having legal consequences." (Holland's Jurisprudence, p. 9.)

Jurisprudence a Progressive Science.—Being a science, jurisprudence is a progressive one. It must keep pace with the development of actual systems of law as the ever increasing variety of legal phenomena moves on, from time to time, to meet the new conditions which constantly develop in the deep-seated human characteristics. As civilization traces its way to a greater and better goal; as man always looks for his advancement and progress; and as the relations of man to man increase in variety and scope, and thus become more and more complicated, as time goes on, so jurisprudence must naturally develop to adapt itself to the exigencies of new conditions. Therefore, we may safely assume, without fear or doubt, that "jurisprudence is a progressive science." (Holland's Jurisprudence, p. 9.)

Application of the Term "Jurisprudence."—We have already noted that jurisprudence is a science. We have also observed that it is a formal and progressive science. The term, therefore, cannot correctly be applied to actual systems of law, to current views of law or to suggestions for its amendment; but it is the name of a science. "This science is a formal or analytical rather than a material one. It is the science of actual or positive law. It is wrongly divided into 'general' and 'particular' or into 'philosophical' and 'historical.' It may, therefore, be defined as 'the formal science of positive law.' " (Holland's Jurisprudence, p. 13.)

Science is Indivisible.—We have just said that "jurisprudence is a formal science of positive law." If it is a science, then it must be immaterial, being an abstract thing which exists only in the correct co-ordination of thoughts. It is unlike matter, which can be divided into molecules and atoms, but it is an atom in itself which is incapable of any hypothetical division. Thus, Professor Holland said: "Jurisprudence ought * * * to be used without any qualifying epithet, as the name of a science." (Holland's, Jurisprudence, p. 5.) But, although jurisprudence is the mere creation of man's thought; although it is immaterial; and although it is a science, and therefore one and indivisible—yet it can be divided into heads or departments, as grammar is divided into rules or music into notes and keys. The same author has, thus, said: "But although the science is one, it may have as many heads or departments as there are departments of law. It would, therefore, be unobjectionable to talk of 'criminal and civil' 'public' and 'private' jurisprudence." (Holland's Jurisprudence, p. 12.)

What is Meant by "Philippine Jurisprudence."—Now, we come to a still greater difficulty. We have seen that "jurisprudence" can not be applied to the actual system of law of a country or nation; we have also seen that it should not be used with any accompanying epithet, if we wish to use it properly. But here, we find ourselves contradicting our own statement when we say that there exists such a thing as "Philippine Jurisprudence." Can we find our way out of this apparent contradiction?

It is not uncommon among jurists and commentators to apply the word "jurisprudence" to the science of positive law in vogue in a portion of the great human race. Thus, we often meet, in our reading, with the phrases "English jurisprudence," "American jurisprudence," "Anglo-American jurisprudence," and the like. Here, in the Philippines we have an example of these universally known phrases in the Spanish edition of our Philippine Reports, baptized with the name of "Jurisprudencia Filipina," which, translated literally, means nothing more than "Philippine Jurisprudence." Just what this high sounding title, "Jurisprudencia Filipina," covers, we cannot positively say; but what we are sure of is that it covers the practical part of the science of law existing, at present, in these Islands.

For the purpose of our study, therefore, and in order to arrive at a good and satisfactory result, we must delve into the origin and development of both the practical and theoretical portions of our jurisprudence.

PART II

DISCUSSION

REMOTE SOURCES OF THE PHILIPPINE JURISPRUDENCE

We shall, for the purpose of this work, go back briefly and summarily into every possible source of our jurisprudence in order to have a complete skeleton for the basis of our study.

A. THE CIVIL LAW OF ROME

In the study of the sources of the world's jurisprudence, we find the Roman law as the most interesting instance. Its sources, as we shall see later, are the most natural results of human association and psychological evolution.

1. Sources.—The primary sources of the Roman law are the *fas*, or the will of the gods interpreted by pontiffs and augurs; the *mos*, or custom; the *jus*, mainly custom ripened into law; and later the *lex*, or statute enacted and promulgated by the different assemblies during the republic of Rome and by the emperors at the time of the Empire. (Sohm, sec. 11 *et seq.*; Muirhead, Pt. I, Chapts. I-III.) In the latter development of the Roman civil law, however, we find other intermediary sources, which are the legal fictions (Maine, Ancient Law, p. 25; Sohm, sec. 12; Wilson, The State, pp. 143-45), the practorian edicts (Muirhead, sec. 43; Sohm, sec. 15), and the works of jurisconsults (Sohm, sec. 18; Hunter, pp. 53-55).

2. Stages of Its Development.—The first stage of the Roman law is known by the name of "jus quiritium," or the law of the *quirites* (spearmen)—the law predominating during the legal period (B. C. 754-509 C. A.). Its most salient characteristics are marked by "formalism and rigidity" and by a strongly religious tone. (Sohm, sec. 11.) It was made up of laws governing persons, obligations, and property; and, as a whole, it was very simple, being confined only in its application to the people of Rome. (Sohm, sec. 9.) The second stage is known as the "jus civile" (law for citizens) and its applicatic was more liberal than the *jus quiritium*, having secured to the plebs the right of succession (XX Encyc. Brit. (9th Ed.) 676-9). This law began to be conceived about B. C. 566-522. Legislation was begun at this time by the *Comitia Curiata* (a military assembly). Under this law, the Twelve Tables were enacted and completed in 449 B. C. (Durray, Hist. of Rome, I, 381-340.) Legal fictions also began under the *jus civile*. Up to this stage the laws were intended for the people of Rome only; but with the increase of Roman trade and the influx of foreigners into the City of Rome, it was found necessary to adopt the laws of the surrounding nations, known by the name of *jus gentium*. "In its infancy, the *jus gentium* was *jus honorarium*, having undergone a period of probation and attained to manhood—it was tested more particularly in its application to foreign trade—it took its place definitively as part of the civil law of Rome." (Sohm, p. 259.) The *jus gentium* is not the law of nations, but the law of aliens. (Hadley, Roman Law, p. 90 *et seq.*) It is the source of the English "Law Merchant" now in force in these Islands (Act 203, sec. 196). The fourth and last stage of the Roman law is the *jus naturale*, the flowering of Roman jurisprudence. It is the law available to all human beings *per se* (Muirhead, p. 55); "the law which nature has taught all living things so as to be common to men and beasts" (Ulpian). The *jus naturale* is the outgrowth of the doctrines of philosophers, especially the Stoics, and the jurisconsults such as Tiberius Coruncanius (Howe, p. 73), P. M. Scaevola, Servius Sulpicius, Paulus, Ulpian, Modestinus, Papian and Caius. (Sohm, sec. 18; Hunter, pp. 53-55). The so called *responsa prudentium*, or opinions of licensed jurists, were given the force of law (Muirhead, sec. 59; Id., sec. 78).

3. Roman Codification.—Owing to the chaotic condition of the law, which was scattered in loosely detached leaves, consisting of statutes, unwritten law, the praetorian edicts, the imperial edicts and the works of text writers, it was early conceived by the Romans that codification was necessary in order to facilitate the work of magistrates and counsels. The word "code," as understood by the Romans, was simply a "reduction of the entire body of the law to certain simple, statutory form, logically arranged." (Hepburn, Historical Development of Code Pleading, pp. 1-6.) The Roman jurists began to understand the value of codification by the consolidation of the praetorian edicts in B. C. 342. Thus, Professor Wilson, now President of the United States, says: "Codification began with the praetor's edict. We have seen how before this time each praetor accepted the edict of his predecessors, adding his own edicts, and so on, to the next praetor to be known afterwards as the *edictum*

perpetuum, the edict handed down from praetor to praetor. These edicts were soon codified by Julianus by order of Hadrian and submitted to the ratification of the *Senatus Consultum;* thus called *edictum Hadrianum* or *Julianum*. Similarly, the edicts of provincial governors, in their administration of justice, were codified." (Wilson's, The State, sec. 279.)

Caesar was great enough to see that one of the crying needs of the people was the reduction of the great bulk of law into one simple form. He attempted to codify it, but was unable to accomplish the work because he was not a jurist but a soldier. His first attempt was while he was a provincial governor, when he met crying difficulties in searching and applying the law. (Plutarch's Life of Casear, p. 58.)

The practical steps in Roman codification began, as we have seen, with the consolidation of the praetor's edicts about the year B. C. 342. Then followed the early collection of imperial rescripts, with few edicts, known and often quoted in Alaric's Breviary as the Gregorian and Hermogenian codes published in the years 300 and 363 A. D., respectively. (Muirhead, sec. 79.) About three-quarters of a century later the Theodocian Code was published in 438, and this became the subject of numerous commentaries. (Muirhead, sec. 80; Hunter, pp. 86-7.) Subsequent to the promulgation of the Theodocian Code, the novels (*novellae constitutiones*), which consisted of the imperial edicts of both the Eastern and Western Empires, were issued. (Muirhead, p. 369.) All of these practical attempts served as an incentive and important factor in the building up of a great and more scientific work, the gift to the world of Roman civilization—the *Corpus Juris Civilis of Justinian*.

The Corpus Juris Civilis.—For the purpose of this historical sketch, let us now have a glance at this great code, the culmination of Roman legal thought. The Corpus Juris Civilis, sometimes called the Pandects, consists of four parts: the Institutes, the Digest or Pandects, the Code, and the Novels (Novellae Consitutiones).

The Institutes was an introduction to the work. It was intended as an elementary text book for the use in law schools of Constantinople, Berytus and Rome. It was mainly the work of Theophilus and Dorotheus, professors, respectively, of the two first named schools. It was divided into four books, to wit: Persons, Property, Obligations and Actions. The work was completed and published in November 21, 533. (Muirhead, pp. 380-3.)

The Digest or Pandects.—The Digest was collected from the works of thirty-nine authors, containing the aggregate number of 9,000 extracts. The commission worked on three sections. It formed the largest fraction of the Corpus Juris Civilis, and was divided into fifty books arranged after the model of the *edictum pepetuum* and the XII Tables. (Muirhead, pp. 383-5; Hadley, p. 11.) It was issued December 30, 533 (Sohm, pp. 126-128).

The Code.—It contained more public and criminal law than the Digest, and was divided into twelve books. Its sources were the documents issuing from the emperors. It was published in November, 534. (Muirhead, p. 385-6).

The Novels (Novellae Constitutiones.)—These were a supplement to the Corpus Juris, containing later enactments down to 565. They relate mainly to public and eclesiastical affairs, but some deal with private law, especially intestate succession. (Muirhead, pp. 386-7.)

4. Scope of Influence.—If we look into the annals of legal development of almost every civilized country of the world, we will find the astounding influence of the Roman law. It is an undeniable fact that of all the three world's great legal systems, the Roman system is the most widely extended. It is the basis of the canon, or ecclesiastical law (Wilson's, the State, secs. 328-332); part of the Mohammedan law (Amos, Roman Civil Law, p. 392); the English equity jurisprudence and other laws (Maine, Village Communities, 343); the modern civil law of Latin Europe, i. e. Italy, France and colonies, Spain and colonies, Belgium and colonies; Greece (Sohm, p. 137); Russia; Austria; Germany (Sohm, Ch. I (1); Switzerland; Netherlands and colonies; the Ottoman Empire (Irving's, Roman Law, 242 note); British possessions, e. g. Scotland (McKenzie, 46, 47), South Africa, etc.; American possessions, e. g. Louisiana (How, Lect. XIV), the Philippines, Porto Rico, the Panama Canal zone (Case and Comment, Vol. XVII, p. 220); the Latin America, and Japan. From these we see that the Roman law has completely circumnavigated the world, and it is still to be expected that in due time, judging from the present tendency, it will be adopted by every civilized country. In this connection it is quite proper to quote from an eminent writer:

> "This civil law of Rome became the expression of the highest Roman civilization. It was the best contribution of the Roman Republic to the Civilization of the world. With the arts of Greece and the monotheism of Judea, it constituted the triple combination which has directed and must continue to direct forever, the highest cultivation of the human race. No wiser or better system of law has ever been devised by the genius of man than the Roman Civil Law; and it is safe to say that it will remain forever, unrivalled and unapproached in the annals of jurisprudence." (Morris, History of the Development of Law, p. 169).

B. THE COMMON LAW

1. Sources.—To state briefly, the main sources of this system are customs and usages, the feudal system, and judicial precedents. Of the first and the last we need not say much, for they are the same as those of the Romans; but as to the second, we may say that the Teutons who crossed the Channel carried with them this institution, which exerted a great influence on the law of property in England.

2. History and Development.—As we have just said, when the Germanic people crossed the sea, they carried with them their own laws and institutions. These laws were enforced against the vanquished, who set up a strong opposition, as a result of which there was much shedding of blood. The final outcome was a sort

of compromise, a blending of two rival institutions which finally ripened into what is now known as the common law. But, as a law cannot remain stationary, however perfect and complete it may be, but must keep pace with the progress of civilization and the exigencies of local conditions, so the common law also had its period of growth and development. Wise legislation was added to it from time to time to protect the rights and interests of the people, and foreign elements were borrowed from neighboring countries, such as the English "Law Merchant" and the English equity jurisprudence, which is an outgrowth of the Roman law.

3. Scope of Influence.—The common law does not have so wide a realm of influence as does the Roman, but it is an institution peculiar to the Anglo-Saxon race, and it is carried by them wherever they go. Thus, it is in vogue in the greater portion of English possessions, as well as in Australia, Canada, and a great portion of the United States. But in the last named country, the present tendency is to do away with the common law. (Morris, History of the Development of Law, 299-300)

C. THE ANGLO-AMERICAN JURISPRUDENCE

1. Sources.—As the English colonists settled in the western lands to build permanent homes for themselves and families, they carried with them their laws, customs, and institutions and implanted them in their new home. Thus, the common law of England predominated in America in the early colonial days. But the common law did not find itself sovereign, supreme, and independent in the New. World, for there were the French in Canada and New Orleans, and the Spaniards in Florida, Mexico, California and Texas, who had their own laws and institutions which were the outgrowth of the Roman law. Consequently, there was rivalry between the two great systems and there would have been a grave conflict had it not been through the wisdom of the early colonists who looked at the practical rather than the philosophical side of the situation.

2. Development.—Still another factor which contributed to the building up of the Anglo-American jurisprudence was legislation created by local demands. This legislation either originated from the local legislators themselves to meet the social and political needs of the American people, or was borrowed from every corner of the globe where foreign laws could be adapted to the local needs. One American author has well said: "The work of reform, of elimination and substitution has gone on gradually but surely. Almost every salient feature of the common law of England has been banished from our social system and from our jurisprudence. We have abolished the rule of primogeniture. We have abolished the invidious distinctions between males and females in the inheritance. We have restored to woman the management of her own estate and the right to contract for herself which was secured to her by the Roman law but denied by the common law of England. We have repudiated and utterly rejected the barbarous and inhuman penal branch of the common law, and have legislated on the subject independently of the rigid demands of feudalism and more in accord with the more reasonable regulations of

the Code of Justinian." (Morris, History of the Development of Law, pp. 297-300.) But, it must not be understood that the Roman Law predominated over the English common law in the annals of American jurisprudence, for such is not the case. The present American jurisprudence is an entirely distinct system, a creation in itself, a new specie singular in its kind and unlike any of its predecessors. It is the result of the blending or rather the amalgamation of the world's two great legal systems. Thus, the same author says: "But common law and equity, the Common Law of England, and the Civil Law of Rome have not conserted to maintain their respective conditions unchanged in our American Jurisprudence." (Id., p. 298.)

3. Scope of Influence.—Since the advent of American sovereignty in these Islands in August 13, 1898, immense modifications in our Spanish substantive law have been effected either expressly or by necessary implication. Let us not dwell at length on the changes which have taken place during the last sixteen years at this point of our discussion; suffice it to say that the Anglo-American jurisprudence has exerted a tremendous influence on our present jurisprudence.

D. THE PREHISTORIC PHILIPPINE JURISPRUDENCE

1. Sources.—As to the sources of the laws of our forefathers, we have scanty information. Historians do not tell us definitely from what sources they obtained their laws, whether they were the spontaneous creation of a people living in society or were borrowed from some other definite and well-formed sources. At any rate, we must be satisfied that our ancestors had a system of laws partly written and partly unwritten before the Spanish conquest. We may safely assume that they had their laws before their migration to these Islands; for, before that time, they were already living in organized societies under patriarchal government. By presumption from our scantily known facts, their laws may have partly originated from customs and usages peculiar to their race and environment, and partly borrowed from surrounding countries. This latter theory may be drawn from the etymology of some of their legal terminologies and certain ceremonies such as the *suntee*, which is a Hindu institution. (See Craig's Pre-historic Philippines.) Whether the Mohammedan law has exerted any influence on the laws of the ancestors of Christian Filipinos, history does not tell us; but as to our Moro brethren in the south, we know that it has taken hold of them even though in a corrupted form. (See N. M. Saleeby's Article on the Moro Problem, published in the *Manila Times* of October 25, 1913.)

1. Legislation.—The natives had their written laws before the Spanish conquest. They had both substantive and adjective laws; civil and criminal; administrative and international (or rather interstate). (See I, PHILIPPINE LAW JOURNAL, 149 *et seq.*) The writer does not deem it necessary to go into the details of this prehistoric legislation; it is sufficient to point out its most salient features.

Civil Law.—In their civil law, they had the law of persons, the most conspicuous characteristic of which was "reverence to womanhood," which very much resembled that of the Teuton. (See I, PHILIPPINE LAW JOURNAL, pp. 163, 175, 179.) They

had their law of property, and mode of acquiring ownership. They recognized succession; they executed wills *viva voce* (nuncupative); and even gave betterment, which is a characteristic of the Roman law. (*Id.*, pp. 165-167.) They had their law of obligations and contracts, the most interesting as well as the wisest provision of which was rigid good faith. (*Id.*, pp. 167-169.) Their commercial law was not highly developed owing to the fact that they had very little need for it. (*Id.*, pp. 170-171.)

Penal Law.—Their penal law was of the primitive type. The penalties were rigid and severe and may well be compared with those of the Greeks and the Romans. (See Araneta's Lecture, published in II, PHILIPPINE LAW REVIEW, p. 178.) They had crimes against religion and worship; the crime of "lèse majesté;" crimes against persons; crimes against chastity; crimes against honor, crimes against property; etc. (See Blair & Robertson, *The Philippine Islands*, Vol. V, pp. 179-185; Morga, *Sucesos de Filipinas*, pp. 303-305; I, PHILIPPINE LAW JOURNAL, pp. 171 *et seq.*) Criminal procedure was as simple and primitive as civil procedure. (See I, PHILIPPINE LAW JOURNAL, pp. 177 *et seq.*) But the writer is of the opinion that one reason why the Filipinos easily adopted the Spanish laws extended to these Islands by the law of the Indies of 1530, is the fact that there is not much difference between the laws of our forefathers and the provisions of the *Fuero Juzgo*, the *Fueros Municipales*, and even the *Siete Partidas*, especially in criminal law. If we compare these pre-Spanish laws with the provisions of Books II, IV, V, and VI of the *Fuero Juzgo*, commonly known as the *Forum Judicum* and the *Partida VII* of the *Siete Partidas* we shall find many striking similarities.

3. Scope of Influence.—Just to what extent our ancient customs and usages have influenced our present jurisprudence, is merely a matter of speculation. There are many provisions of our substantive laws in force, at the present time, which authorize a resort to local customs and usages in the absence of express statutory provision. (See Arts. 570, 571, 590, 591, of the Civil Code, regarding easements; Art. 128, *id.*, regarding interpretation of ambiguous civil contracts; Art. 277, par. 2, of the Code of Commerce, regarding mercantile commissions; Art. 304, *id.*, regarding commercial deposits and many other similar provisions. And there are not a few instances in which the local customs and usages have been invoked by courts of justice where there is no law exactly and justly applicable to an actual case.

In Cariño *v.* The Insular Government (212 U. S. 449), Mr. Justice Holmes said:

> "A native title to land in the Province of Benguet in the Philippine Islands which for more than fifty years prior to the Treaty of Peace with Spain of April 11, 1899, a native Igorot and his ancestors have held in accordance with Igorot *custom* as private property, should be recognized by the Insular Government although no document of title has issued from the Spanish crown, where, even if tried by the law of Spain, without reference to the effect of the change of sovereignty and of the declaration of purpose and safeguards, embodied in the organic Act of July 1, 1902, it is not clear that he is not the owner."

This case was decided on the theory that the ancestors of Cariño had held the land as private owners under the local customs and usages of the Igorot people, and that the Spanish law had never been extended in its operation to such original ownership of lands.

In Smith *et al. v.* Lopez *et. al.*, 5 Phil. 78, the court said:

> "The rule as laid down by authorities is to the effect that in a contract for services, it shall be presumed that a certain compensation was intended to be fixed although there may not be express stipulation in regard thereto; taking into consideration the law in force and the *customs* of the country where the contract was executed except where such compensation is to be fixed by a third person or by a competent court upon the testimony of experts."

(See, also, Sentence of the Supreme Court of Spain of October 18, 1899.)

CHAPTER III
THE SPANISH JURISPRUDENCE

A. ORIGIN

In our study of Spanish history, we find that the Iberian Peninsula has been the favored nook of racial movements, and these races founded kingdoms which were independent from each other until a final consolidation was formed by the marriage of Ferdinand of Aragon and Isabella of Castile. We first heard of this peninsula with the conquest by Caesar of what was then known as Southern Gaul. Since this conquest the Roman law might have exerted influence over the natives of Spain. But previous to this conquest, they had had the invasion of the Visigoths from the north who carried with them their own laws and institutions, the authentic proof of which is the well known *Forum Judicum*, or *Fuero Juzgo*, or *Fuero de los Jueces*.

Next, we have the coming of the Moors from their eastern homes through the Northern Coast of Africa and across the Straits of Gibraltar, with swords in hand and faith for their guide, to propagate the doctrines of the Koran. But, fortunately, their advance was checked by the Franks, and so they satisfied themselves with settling in Granada, Seville and Cordova (709), establishing an empire there and implanting their laws, institutions, religion, and civilization in the new territory. It is an undeniable fact that the civilization of the Moors was superior to that of the people of those provinces which fell under their sway. Whether or not the Mohammedan legal system has exercised any influence on the jurisprudence of Spain, it cannot safely be determined; but we may conclude that it has, at least, had a bearing on the *Fueros Municipales*, which are the outgrowth of local customs and usages, and even on the *Forum Judicum*. (See *The Visigothic Code*, Book XII (II) 12.)

B. DEVELOPMENT

1. The Forum Judicum.—This collection of laws was promulgated about the middle of the seventh century (649-652) among the Visigoths, and it has been declared "the most remarkable monument of legislation which ever emanated from a semi-barbarian people, and the only substantial memorial of greatness or erudition

bequeathed by the Goths to posterity." (Scott, The Visigothic Code, Preface, XXIV.) It was originally written in Latin, though of the monkish variety. It not only embodied the ancient customs of the Visigoths, but it was also tinged with Roman ideas (Kitchin's History of France, I, 66), and the Hebrew customs, religion and penalties (Scott, The Visigothic Code, Book VI (IV) 5, *et seq.*)

The invasion of the Moors and the establishment of the Moslem empire in the Peninsula overshadowed for a time the *Forum Judicum*, but even the Moslems themselves, allowed its use by "Christian magistrates during the period that Spain remained under the Moslem sceptre." (Scott, The Visigothic Code, Preface, XXV.) As the Saracen dominion slowly receded, the force of the *Forum Judicum* correspondingly increased and when, in 1236, San Fernando (III) captured Cordova, the chief seat of Mohammedan power in Spain, he signalized this epochal victory of the cross over the crescent by causing the *Forum Judicum* to be translated into Castilian and giving it the force of law in the conquered region. When Alfonso IX (El Sabio) projected the codification of the *Siete Partidas*, it was used as a basis. It was also used in the Frankish "Capitularies" and even invoked by our present Supreme Court as one of the sources of Spanish law. (See Legarda *v.* Valdez, 1 Phil. 148.)

Now, let us consider some of the characteristics of this ancient and long-lived code. It consists of twelve books, but its arrangement is illogical. Book I, purports to be an introductory, treating of laws and law-makers, but its observations on these themes are very meager and they by no means embrace all that the work contains. Book II is devoted to procedure, but many important provisions on this subject are found in other books. The same is true of Books II and IV, which relate to domestic relations and inheritance, the former containing a considerable element of what we should now regard as criminal law. Book V is a heterogeneous collection of laws concerning religious duties, gifts, contracts, and status of slaves and freed men. Books VI-IX, inclusive, treat, in a desultory way, of crimes and penalties. Book X returns to the subject of inheritance, treating also superficially, of partitions, boundaries, and limitations of actions, and is abnormally long. Book XI is a hotchpotch of provisions belonging to criminal law and police power, as applied to physicians and foreign merchants; while Book XII, one of the longest in the work, provides elaborate measures for the baiting of Jews and heretics.

It is true that it is by far too illogical in its arrangements and contains severe provisions; it is highly theocratic in character, abounds in examples of *Privilegium Clericali*, and reveals no hint of religious toleration; it even contains traces of the barbaric superstitions entertained by the Visigoths before their conversion to Christianity, such as belief in sorcery, divination, witchcraft, and the ordeal; but, in other respects, it is generally marked by high moral and even a somewhat democratic tone, and especially by a lofty judicial standard as regards probity, impartiality and justice. For the sake of illustration we shall quote one of its provisions:

> "The judge should be quick of perception; firm of purpose; clear in judgment; lenient in the infliction of penalties; assiduous in the practice of mercy; expeditious in the vindication of the innocent; clement in his treatment of criminals; careful of the rights of the stranger; gentle toward his countrymen. He should be no respector of persons, and should avoid all appearance of partiality." (Book I (1) 7.)

2. *Other Compilations.*—For about three and a half centuries following its promulgation, the *Forum Judicum* remained the sole compilation of general laws in Spain. Of course, there were the local "fueros" such as the *Fuero de Sobrarbe*, which had a very democratic and free tone and existed as late as the year 1700 when it was formally abrogated.

The Fuero Viejo.—About the end of the eleventh century the Conde de Castilla, Don Sancho García, conceived the preparation of a new code which had for its final outcome the so called *Fuero Viejo*. This code contained five books loosely arranged without logical accumulation of contents, and was probably written in Latin. It was not extended over the whole Spanish dominion but was limited in its operation to Castile and Leon. (De San Martin's *Códigos Españoles*, I, pp. 226, 239, *et seq.*)

The Fuero Real.—In order to translate the dream of his father into reality, Alfonso el Sabio took up the work of general codification. His first step was the preparation of a provisional code which was called the "Fuero Real" and promulgated in 1255. It contained four books, and its provisions were of a temporary character, "The *Fuero Real* is to the *Partidas* what the Institutes are to the Digests of Justinian." (Morean & Carleton's *Partidas*, Preface, VII.)

3. *The Siete Partidas.*—Under Alfonso el Sabio, in 1256, four lawyers, whose names have not been handed down to us, began to compile, under royal order, the laws of what was then Spain. The work was finished in seven books and was called the "Siete Partidas." "The Partidas," says one author "has a similar history to the Pandects. The Partidas purport to be an original compilation of the laws of Spain but are in fact mainly a consolidation of the Pandects, made after the finding of the copy at Amalphi. The Partidas were heralded as the most wonderful production of the Spanish jurists. How small the work and how baseless the pretension of the authors will be shown by a comparison of the two works. The Partidas bear the appearance of a compilation of a rude people, made from the laws of a highly civilized race." (Ware's, Roman Water Law, Sec. 4.)

The arrangement of the Partidas in the original was in form of a literary accrostic and each book began with a letter of the king's name A–L–F–O–N–S–O. (Ware's Roman Water Law, Sec. 4.) The work was not without defect in its arrangement; but, by far, it came more nearly to perfection than its predecessors. Its accrostic is shown by the following conspectus:

PARTIDAS

TITLE		SUBJECT MATTER
A	Servicio de Dios	I. Laws in general; usages, customs, fueros, ecclesiastical regulations, (a digest of canon law).
L	A fé católica	II. Government and administration.

F | izo nuestro señor Dios	III. Procedure and Property.
O | nras señaladas	IV. Domestic Relations.
N | acen entre homes	V. Obligations and Maritime Laws.
S | esudamente dijeron	VI. Wills and inheritance, guardians.
O | lividanza et atrevimiento	VII. Crimes; exegesis (interpretation); general principles.

Promulgation.—The Partidas was not promulgated as soon as it was compiled because many of its provisions were antagonistic to the interests of the Spanish *Hidalgos*. As many of its provisions were borrowed from the Roman Law, it is but natural that they should not be in accord with the local institutions which were of Germanic origin, modified under local conditions. But as time went by, it was successively promulgated as the Spanish dominion increased. It went fully into operation under Ferdinand by adoption at the Cortes held in Toro, A. D. 1505. (Ware's Roman Water Law, Sec. 4.)

Contents.—Being a compilation of the previous Spanish laws, together with borrowed provisions from Justinian's Corpus Juris Civilis, the Partidas naturally contained the most enlightened provisions and principles conceived at the time of its creation. It contained the Roman idea together with that of the Visigoths. Of course, with the latter we must not forget the influence which the Moslem institutions exerted during the supremacy of that exiled race.

Extent of Influence.—The Partidas did not only hold its sway over the entire Iberian Peninsula but it also exerted a great influence over the other countries in Europe. It is frequently cited by the Supreme Court of Spain even though it has already been superseded by the modern codes. In the Philippines, even at the present time, it has frequently been cited by our Supreme Court in several of its decisions. (See De la Rama *v.* De la Rama, 3 Phil. 34.)

4. Other Laws Subsequent to the Partidas.—After the final promulgation of the Partidas, other laws were enacted, and compilations attempted until the appearance of the modern codes. Thus, we have the *Leyes de Toro* of 1505 which dealt mostly with wills and succession and the support of illegitimate children. This also has been frequently cited by our Supreme Court.

The enactments immediately preceding, including that of Toro, were compiled under the authority of Philip II, in 1567, as the "La Nueva Recopilación." This compilation has also been frequently cited in our present Philippine Reports.

The Leyes de las Indias were mostly royal decrees issued from time to time for the government of Spanish colonies. They dealt but incidentally with private substantive law. As a system of colonial legislation the "Leyes de las Indias" have been much praised and when, about 1661, Felipe IV caused them to be collected and pub-

lished as a *recopilación*, he is said to have produced "the greatest of colonial law books." (Borrows, History of the Philippines, p. 110.) Being designed for all the colonies, it extended automatically to the Philippines, and has been frequently cited by our Supreme Court.

La Novísima Recopilación was compiled by order of Carlos IV because of the then chaotic condition of Spanish legislation. The work was completed in 1805 and, by the Royal Decree of July 15, 1805, it was given precedence over all prior legislation, and with its supplement in 1829 continued to be the chief embodiment of Spanish general legislation until the enactment of the special codes. It consists of twelve books relating to all branches of the law, public and private, substantive and remedial. It is abundantly cited by our Supreme Court. But this compilation is not without critics. Thus, one author says, "Considering the age in which it (La Novísima Recopilación) was compiled, it is much inferior to the 'Fuero Juzgo' which preceded it by eleven centuries and the 'Partidas' of six centuries before." (Walton, Civil Law in Spain and Spanish-America, p. 79.)

C. THE MODERN CODES

Historical.—Up to the beginning of the nineteenth century, Spain had not yet accomplished a systematic and logical codification of its laws. Most of the collections of laws we have heretofore seen, were merely loosely arranged compilations. But, perhaps inspired by the success of Napoleon in his codification of the French laws a movement of this sort was begun in 1811 by a resolution in the Cortes of Cadiz, and later it was expressly provided in the Constitution of 1812. In 1813 the first code commission was appointed, but owing to political agitation in the country no satisfactory result was accomplished until several years later.

The Penal Code.—The first field undertaken was that of criminal law and its provisions were the outcome of the Partidas and the outgrowth of Spanish jurisprudence for centuries. It consisted of a preliminary title and two books. But it was hardly published when a revision was undertaken in 1848. Another revision was made in 1850 and the resulting code came near to the present Penal Code in contents and arrangement. It contained three books. The present Penal Code was completed in 1870 but its final touches were made in 1876. It was extended to Cuba and Porto Rico in 1879, and to the Philippines by the Royal Decree of September 5, 1884, in 1887. (See pp. 5-47, Penal Code, Spanish edition of 1896.)

The Commercial Code.—The next attempt at codification of Spanish laws was in the field of commercial law. This attempt gave birth to the Code of Commerce of 1829 which remained in force until the appearance of the almost obsolete present Code of Commerce now in force in these Islands. This code was extended to Cuba and Porto Rico in the same year of its promulgation, and in 1888 to the Philippines.

Criminal Procedure.—The procedural laws of Spain were scattered here and there in the different compilations and special laws up to the middle of the nineteenth century when the "Ley Provisional" was put in force. This law has never been

entirely abrogated in the Philippines and is often cited by the Supreme Court of these Islands. (See U. S. *v.* Fortaleza, 12 Phil. 478.) Another law of criminal procedure was adopted in 1872 and was also extended to the Philippines, but it is now abrogated by General Orders No. 58. (For the text of these two laws, see pp. 547, *et seq.*, of the Penal Code, Spanish ed. of 1896.)

Civil Procedure.—The first attempt for the codification of Spanish laws on civil procedure, was the adoption of the Provisional Regulations of 1835. Later, the present "Ley de Enjuiciamiento Civil" was put in force in 1856 in the Peninsula and extended to the Philippines in 1888. This code is elaborate and scientific in arrangement. It contains three books. It is almost entirely abrogated by the present Code of Civil Procedure (Act No. 190), except a few articles, such as articles 704-9 regarding the procedure in justice of the peace courts, which are still in force.

Civil Code.—The latest and perhaps the most important of the Spanish codes is the Civil Code. Drafts were made in 1839 and 1851, respectively; but no good results followed until 1880 when a new draft was made and promulgated in the Philippines in 1889. Its provisions regarding divorce, however, was suspended by Governor General Weyler and has never, therefore, been put in force in these Islands. (See Benedicto *v.* De la Rama, 3 Phil. 36.)

Other Spanish Substantive Laws.—The "Ley Hipotecaria" was enacted in 1861 and extended to the Philippines in 1889. The "Ley de Minas" of 1859 with its revision in 1868 was also extended here. The "Ley de Aguas" of 1866 was also extended here and is still in force. (See Montano *v.* Insular Government, 12 Phil. 584; Ker *v.* Camden, 6 Phil. 732.) But the Law of Waters of 1879 has never been in force here. (*Id.*) The "Ley de Propiedad Intelectual" of 1879 was extended to the Philippines six months after its promulgation in Madrid; but it is the prevailing opinion that its administrative provisions were abrogated by the change of sovereignty. (See III Op. Atty. Gen. 453; IV *id.* 8.)

D. EXTENSION TO THE PHILIPPINES

It is needless to repeat here when and by what means the modern Spanish codes and subsequent laws were extended to these Islands, for almost each and every one of them was expressly put in force in the Archipelago by royal orders and decrees. What we need to know is whether the previous laws which we have discussed under this chapter have been expressly extended here. We are, indeed, very fortunate in finding that the development of our jurisprudence from the Malay customs and usages up to the present time has never had any break; for, just about a decade after the discovery of these Islands by Magellan, the laws of the Peninsula were applied to the colonies by one of the "Leyes de las Indias" promulgated in 1530, thus:

> "Que en todos los casos, negocios y pleitos en que no estuviere decidido ni declarado lo que se debe proveer por las leyes de esta recopilación ó por cédulas, provisiones ú ordenanzas dadas, que por nuestro orden se despacharán, se guarden las leyes de nuestro reino de Castilla, conforme á la de Toro, asi en cuanto á la sustancia, resolución y decisión de los casos, negocios y pleitos, como á la forma y orden de sustancias." (Ley II, Tit. I, Lib. II, Vol. I, p. 145, Recopilación de Leyes de las Indias.)

CHAPTER IV
THE PHILIPPINE JURISPRUDENCE

A. INTRODUCTORY TO THE CHAPTER

In the previous chapters, our attention was confined to the study of all the possible sources of the Philippine jurisprudence, and its slow but steady growth up to the promulgation of the present codes and other Spanish substantive laws applicable to these Islands. The aim of this present chapter is to discuss briefly our present jurisprudence as affected by the change of sovereignty.

B. CIVIL JURISPRUDENCE

1. Substantive Law

Civil Law.—As in every organized community the prime needs of its people is a rule of conduct which will govern the relations of man to man, let us, therefore, first of all, discuss the rules and principles which govern such relations. We have, heretofore, seen that our jurisprudence is not the spontaneous creation of man but the product of legal evolution from time immemorial. We are, therefore, apt to find such rules of conduct in written and more or less logically arranged form provided for us for our guidance and facility.

Of the laws, rules and principles governing persons, their capacity, and their domestic relations, we have almost a complete compilation in Book I of the Spanish Civil Code which is now in force in these Islands. But, although this book seems to be perfect in itself from the point of view of the Latin people, it did not appear satisfactory to the Anglo-American ideals. Consequently, just shortly after the change of sovereignty in these Islands, several of its important provisions were changed, either because they were not suitable to the present system of administration, or, else, the exigencies of the time could no longer tolerate them. Thus, one of its most important provisions, the law regulating marriage, was quickly superseded by General Orders No. 68 (the Marriage Law), which is of Anglo-American origin. And so is the law regarding corporations and associations, which have to some extent been abolished or at least modified by the corporation law (Act No. 1459). This is also true with regard to the laws governing adoption, absence, prescription, and the like which are to some extent modified or repealed by the Code of Civil Procedure (Act 190) and amendments.

The law of property is not the least to suffer modifications. Take, for instance, the provisions as to prescriptions, which are modified or repealed by Act 190 and other Acts dealing with the same point. With this subject we also have to take into consideration the Law of Waters of 1866; the Irrigation Act (No. 2152 of the Philippine Legislature); the Spanish Mortgage Law; and the modified form of the "Torrens System," the Land Registration Act (No. 496 of the Philippine Commission). With regard to the ways of acquiring ownership, such as occupation, donation, and successions, there has not been much change except by Act 190, but some of its provisions have been re-enacted by Act 2141.

As regards contracts and obligations, there are many provisions in Book IV of the Civil Code which have been modified by Acts of the Philippine Commission and the Philippine Legislature since the change of sovereignty. On commercial contracts there is the almost obsolete Code of Commerce with its numerous amendments and modifications, among which are those provisions regarding corporations, etc. (For ample reference regarding repealed or modified articles of the Code of Commerce, see I, PHILIPPINE LAW JOURNAL, 12.)

There are other Spanish substantive laws in force in these Islands with their corresponding modifications by recent legislation, and among which are the Ley Hipotecaria (Mortgage Law) modified by Act No. 496, the Land Registration Act; the Ley de Minas of 1859, by the Act of Congress of July 1, 1902, which also contains important mining provisions; the Ley de Aguas of 1866, modified by the Irrigation Act.

II. Adjective Law

Civil Procedure.—Before the advent of American sovereignty to this Archipelago, the laws in force regarding this subject is the Ley de Enjuiciamiento Civil (Law of Civil Procedure). It was extended to the Philippines just a decade before the American occupation. It is an elaborate and, undoubtedly, a scientific piece of legislation. Book I treats of jurisdiction and procedure in general; Book II of ordinary proceedings; and Book III of *Ex Parte* proceedings. There is a serious objection to this piece of legislation, in that almost every sort of an order is appealable and, consequently, suits are interminable. With the change of sovereignty, it was found convenient to change the system entirely, and as a result, an entirely new code, borrowed from the Anglo-American jurisprudence, mostly from the California Code of Procedure (See Yangco *v.* Rhode, 1 Phil. 410), was adopted on October 1901 by the Philippine Commission. There are, however, few articles of the old law of civil procedure which are still in force, especially those relating to processes in justice of the peace courts; but besides those few articles, this branch of jurisprudence has undergone a revolution and not an evolution.

C. CRIMINAL JURISPRUDENCE

I. Substantive Law

Criminal Law.—We have already seen in a bird's-eye view the evolution of our criminal jurisprudence. We have also seen that this evolution was the work of centuries of experiment and advancement from the *Forum Judicum* to the *Partidas*, finally culminating in the adoption of the Penal Code. For the greater portion of our criminal jurisprudence, therefore, we have for basis its Spanish ancestors; and, consequently, we have to resort to the jurisprudence of Spain in the interpretation and determination of questions that may arise.

But this branch of our jurisprudence did not remain unaltered with the change of sovereignty. On the contrary, perhaps on grounds of humanity and convenience, our legislators, from the beginning of the present administration, began to import

portions of the Anglo-American jurisprudence. Thus, several provisions of the Penal Code have been repealed or superseded by subsequent enactments, among the most important of those suffering some change being the provisions of Book II. Several titles of this book have suffered mutilations, especially Title II, which provides for crimes and penalties against the fundamental laws of the State—hence administrative in character. Among the most important changes introduced are the Libel Law (Act No. 277); Treason, Insurrection, and Sedition Law (Act No. 292 and amendments); The Customs Administrative Act (Act No. 255 and amendments); Internal Revenue Law (Act No. 1189 and amendments); the law on perjury (Act No. 1697), and several others. Almost all of those Acts are, without exception, borrowed from the Anglo-American jurisprudence.

II. Adjective Law

Criminal Procedure.—In our study of the history and development of our jurisprudence, we stopped at the extension of the "Ley de Enjuiciamiento Criminal" of 1872 to the Philippines in 1888. One serious defect of this system is that it is almost of an inquisitorial character, and as a result it is not in accord with the more liberal ideas of the Anglo-American jurisprudence on the subject of criminal adjective law. Shortly after the American occupation, criminal procedure in these Islands was found in a chaotic condition, and an attempt to better the existing laws on the subject was thought a difficult and undesirable task. To meet the crying needs and expediency of causes then pending, it was thought advisable to borrow the most simple and comprehensible system generally followed in American courts, "in the interest of justice and to safeguard the civil liberties of the inhabitants" and the result was the promulgation of General Order No. 58 by Major General Otis in April 23, 1900. This General Order is now generally known as the Code of Criminal Procedure. It was not intended and it never assumed to repeal the then existing laws on the same subject except in so far as they were inconsistent with its provisions (G. O. 58, sec. 1); but because, perhaps, it is sufficient in itself for the needs of the courts, the former law of procedure, is now seldom used. This new code is a combination of the two great contending systems—the *accusatorial* and the *inquisitorial.*

D. CONSTITUTIONAL LAW

Definition.—Before discussing this subject, let us see what is understood by "Constitution." A "Constitution" has been well defined as "*L'ensemble des institutions et des lois fundamentales; destinees á regler l'action de l'administration et de tous les citoyens.*" (Cited in Thayer's Cases on Constitutional Law., Vol. I, p. 1.) Translated literally, a constitution is "the body of institutions and fundamental laws, destined to regulate the action of the administration and of all the citizens." From this definition we can draw two general propositions, to wit: (1) A constitution is a body of rules or laws which regulates the relation of the State to the people; and (2) it determines the relation of the citizens to the State.

Under the Spanish Régime.—Having the above definition before us, and having the two propositions drawn from it at hand, the first question is: Did we have a constitution under the Spanish sovereignty? The answer to this question would, undoubtedly, be no. The next inquiry, then, is: Did we have constitutional laws? The answer to this is yes. If we have had constitutional laws, where can they be found now? To answer this inquiry, we must bear in mind the colonial policy of Spain, and how she considered her colonies. Spain never treated her colonies as separate entities as England treats Canada and Australia, but considered them as parts of herself. If the Philippines were a part of Spain during her régime over these Islands, the constitutional laws of Spain were therefore our own also. We have, therefore, to look for those laws of Spain which govern the mechanism of the State, especially those royal decrees, orders and cedulas which provide for the government of the colonies. With these decrees, orders, and cedulas, we find a hotchpotch provision in the codes, compilations and special laws governing the relation of the State to the citizens and *vice versa* (see Art. 17, Civil Code), and a special provision regarding the government of colonies in the Spanish constitution. By this it must not be understood that because the Philippines was theoretically considered as a part of the mother country, the constitution of Spain was also the constitution of the Philippines; because, far from being so, these Islands shared but slightly the benefits of the provisions of that constitution and, therefore, it can not be called her own. Having thus found that this Archipelago had constitutional laws under the late sovereignty, even though theoretically only and most of them were never put into practice, as we shall see later, we shall now proceed to discuss the changes which took place when the change of sovereignty was effected.

Under the Present Régime.—Shortly after the cessation of armed hostilities, Congress thought it advisable to organize civil government in these Islands. Consequently, the Act of Congress of July 1, 1902, commonly called "The Philippine Bill," and entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands," was passed; and under it, together with later Acts of Congress relating to the Philippines, the present Insular Government was organized. This Act, even though it purports to be temporary in character, may be regarded as the Philippine Constitution, for under it the mechanism of the present government has been worked out, the relation of the citizens to the State defined, and the rights of individuals determined. (See Sec. 5, Phil. Bill.) *

E. ADMINISTRATIVE LAW

Definition.—"Administrative law" has been defined by French authorities in general terms as "the body of rules which regulate the relations of the administration or of the administrative authority towards private citizens." (Cited in Thayer's

* This thesis was prepared before the passage of the Jones Bill, which is now the organic law of the Philippine Islands.—*Ed.*

Cases on Constitutional Law, Vol. I, p. 5.) From this definition, we can see that administrative law is not foreign to constitutional law, which we have just discussed, but rather a branch of the latter. But for the sake of convenience the writer purposely placed it under a distinct head.

Under the Spanish Régime.—While it is true that Spain had good and humane laws for the government of her colonies, yet her colonial code had many serious defects, among which were: (1) the government was highly discentralized; and (2) the three branches of government, namely, the legislative, the executive and the judicial, were not well defined; for in most cases the administrative officials were given both legislative and judicial powers, acting like petty, absolute kings in their respective realms. For laws of administrative character, we may resort to the "Compilación de Leyes de Indias" and we shall find among the laws therein compiled wise and excellent administrative provisions. Thus, one author in comparing the colonial governments of the several countries in Europe, said that Spain had the best colonial policy and administration. It admits of no doubt that Spain had, we might say, the best colonial administrative laws, but what were those laws good for if they were not enforced?

Perhaps, it is proper to comment briefly in this connection upon the manner in which administrative laws were administered in these Islands during the past régime. It is not the aim of the writer to contradict the opinions of men who have devoted much time to the subject, but merely to call attention to the opinions of other authors equally prominent, whose statements were based upon personal experience. Retana, in his work on the Life of Rizal (Vidas y Escritos del Doctor Rizal), said that there were two Spains—the *Black* Spain (La España Negra) and the *True* Spain. By the black Spain, he meant the tremendous influence of the religious bigots over the administrators sent by the mother country to the colonies, which made the provisions of the law a dead letter. By the true Spain, he meant Spain as it is, with its good and liberal laws. The same author, in a passage in the same work, said that Spain had been too good and her goodness precipitated her downfall. It is a historical fact that the dissatisfaction of the Filipino people was not with the government of Spain but with her administrative representatives and the officers of the church.

Under the Present Régime.—It is a general rule of international law that with the change of sovereignty, follows the change of administration. It is also a rule that administrative laws are not stable and change with the change of sovereignty. This has been the case in these Islands. With the change of sovereignty, a new form of administration entirely based on American jurisprudence has been set up. Under the Act of Congress of July 1, 1902, and the succeeding Acts of Congress and the Philippine Commission and Legislature, the Philippine Government has been placed on a firm democratic basis with the three branches of government distinct, separate, and independent from each other; and with administrative officials with distinct and well-defined duties.

In comparing the two administrations no one will doubt that the latter is better than the former. In the former the officer looked down upon the people, while in the latter he looks up to the people. By this is meant that in the past régime, the people were not given participation in the administration of the affairs of their own government but it was entirely carried on and managed at the pleasure of the officers, while in the latter they have a direct concern in every branch of their government.

F. INTERNATIONAL LAW

Public International Law Defined.—"International Law," or the "law of nations", "is that body of rules an ! limitations which the sovereign states of the civilized world agree to observe in their intercourse and relations with each other." (Davis, Elements of International Law, p. 2.) From this definition it is seen that the parties to international law, or, for the sake of convenience, of public international law, are sovereign states. But the essential attributes of a sovereign state are sovereignty, independence, and equality (Davis, Elements of International Law, p. 35); consequently, the Philippines, being a dependent state, cannot be a party to public international law, and its intercourse with other nations must be made through the mediation of the mother country.

Since the beginning of the history of the Philippines, she never has been a sovereign state in the eye of international law, as she has had no strongly centralized government and intercourse with other nations to have them recognize her as such. After the discovery, she, of course, became a dependent state and her international relations were governed by the laws and treaties of Spain up to the change of sovereignty on August 13, 1898. Even at the present time, the Philippines cannot be a party to international law, except through the mediation of the mother country, and consequently she is governed in her external relations by the laws of Congress and the treaties and agreements of the United States. It is, therefore, needless to delve deeply into this subject at the present time.

Private International Law Defined.—"That branch of international law which treats of the relations of states with the citizens or subjects of other states is called Private International Law: or as it is a question of determining whether the courts of a state are to apply their own municipal law or that of another state in the decision of a given cause, it is sometimes called, and with greater accuracy and propriety, the conflict of laws." (Davis, Elements of International Law, pp. 181-2.) From this definition two propositions can be drawn: (1) the parties to international law are either one state and a citizen of another state, or citizens of two different states; and (2) the question to be determined is the application of the municipal laws of one or more states of which one of the parties is a citizen.

Now, let us discuss here briefly to what municipal laws of the Philippines we have to resort. For the status or capacity of persons, we may resort to Book I of the Civil Code, together with its modifications and amendments regarding age and capacity by Act No. 190 and other acts of the legislature; for the status of mar-

riage, its nature, celebration and validity, to the Law of Civil Marriage of 1870 and General Order No. 68; for the situs of property, to Book II of the Civil Code and provisions of the Code of Commerce and special laws relating to property; for the nature, situs, celebration and validity of contracts both civil and mercantile, to Book IV of the Civil Code, the Code of Commerce and other laws in force, etc. In brief, therefore, the Philippines was not lacking in laws dealing with private international law before and after the change of sovereignty, and so for the jurisprudence regarding the conflict of laws, we have to go to both of the two sources.

G. WHAT DOCTRINES, OPINIONS, AND DECISIONS ARE TO BE FOLLOWED

We have thus far dealt with the theoretical aspect of Philippine jurisprudence, that is, what Professor Holland calls the scientific part of jurisprudence. We have left almost untouched the practical side, or the trend of judicial decisions and opinions of jurists. The writer therefore deems it proper in this connection to mention a few of the authorities who have contributed to the upbuilding of Philippine Jurisprudence.

In civil and commercial matters, the decisions of the Supreme Court of the Philippine Islands and of the Supreme Court of the United States, are, of course, of primary authority and the decisions of the Supreme Court of Spain, the Supreme Courts of the different states, and of Cuba and Porto Rico may be considered as of secondary authority. But with regard to laws directly borrowed from such foreign jurisdictions, they are of primary authority. For further authorities, we have the works of commentators, such as Manresa, on the Civil Code, Sanchez Roman on the Civil Law, Blanco on the commercial law, and others.

For authorities on criminal jurisprudence, we may resort to the decisions of the Philippine Supreme Court, the Supreme Courts of Spain and the United States, the Supreme Courts of the several states having statutes similar to ours, and of Cuba and Porto Rico, and the opinions of commentators such as Viada and Groizard, etc.

On constitutional and administrative laws, resort must be had to the jurisprudence of origin—hence the decisions of the Supreme Court of the United States are of primary authority.

On private international law we have the same authorities above cited, both Spanish and Americans, together with the works of text writers such as Minor, on conflict of laws; Fiore, on Derecho International Privado; Gestoso, *Derecho Procesal, Civil, Mercantil, Penal, Internacional, etc.*

CHAPTER V

CONCLUDING REMARKS

We have seen the origin and development of the Philippine Jurisprudence from its Roman prototype on one side and from the Anglo-American system on the other; we have seen that the Roman Law was brought to these Islands through the agency of Spain; we have also seen that the common law in its modified form is being

extended to us through the medium of the United States. We then may conclude that we have the world's two great legal systems contending for supremacy in these Islands. But it may be adverted to here that even in the Supreme Court of the Philippines there seems to be a conflict of opinions as to whether the common law of England or the American common law is in force in these Islands.

In U. S. *v.* Cuna (12 Phil. 241), Mr. Justice Carson said in one passage:

> "But neither English nor American common law is in force in these Islands nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions and are not in conflict with existing law."

In Alzua and Arnalot *v.* Johnson (21 Phil. 308, 331), the court said:

> "While it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Islands, * * * nevertheless, many of the rules, principles and doctrines of the common law have, to all intent and purposes, been imported into this jurisdiction as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they are derived, and that to breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty, recourse must be had to the rules, principles and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth."

In Serra *v.* Mortiga (204 U. S. 470; 11 Phil. 762), the court held:

> "The guarantees extended by Congress to the Philippine Islands are to be interpreted as meaning what the like provisions meant when Congress made them applicable to these Islands."

And, finally, in Kepner *v.* The United States (195 U. S. 100; 11 Phil. 669), the Supreme Court of the United States said:

> "In ascertaining the meaning of a phrase in the Constitution taken from the Bill of Rights, it must be construed with reference to the common law from which it was taken."

In these few cases just cited, although there is a seeming conflict of opinion, the majority seem to be inclined to hold that the common law of England, or at least its modified form as imbedded in the American jurisprudence, has taken a permanent foothold in this Archipelago, and exerted its influence over the existing jurisprudence, in time to form an amalgam with the other system now in vogue and produce a new species which would be neither Roman nor Anglo-American. It is also worthy of notice that the two rival systems have taken two distinct routes, one from the East, and the other, from the West, only to meet in these Isles to test their supremacy over one another, but perhaps to combine and put into realization Cicero's dream and ideal—"*Non erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempore una lex et sempiterna, et immortalis, continebit.*"—(From the *De Republica.*)