LAND LEGISLATION

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It is my purpose to speak on the historical development of land legislation in the Philippines; because there is not the least doubt that we shall have in this country the same agrarian problems which have been presented in the old countries of Europe, as well as in new countries such as Australia. This question is a vital one, because, agrarian questions are intimately connected with economic and social questions. "* * * * the manner of its tenure and employment (of the soil) lies at the root of political and economic science", said an English author; and has not England, one of the conservative countries of Europe, seen the radical law of Lloyd George in 1908, entitled the "Small Holding and Settlement Act?" And what are the diverse laws relative to public lands, promulgated from time to time, in that part of the world close to us which writers have called the "social laboratory", and which in geography is known under the name of Australia, if not preventive measures to avoid the evil met with in the ownership of land by few complained of by economists? This evil is condensed in what economists call the *plus valia* of land. This evil does not certainly consist of the existence of such a source of income, but in the person entitled thereto, whether an individual or a community. This is really the simplest term to which the struggle between the socialists who demand the nationalization of the soil and the individualists who advocate the maintenance of individual ownership as at present has been reduced. To remedy the deficiencies of both systems, the lease of public lands for long periods has been considered. The study of land laws, therefore, as regards the Philippines, amounts to the study of one of the aspects of the problem, inasmuch as this legislation furnishes the bearing for private ownership. Consequently, the economist Gide did not in vain raise his voice of alarm for the young countries of America with respect to the manner and form of disposing of public lands, if they desire to avoid their monopoly.

We shall begin with the pre-Spanish epoch. When the Spaniards arrived here, individual and collective ownership was already recognized. In those *barangays* where partition had taken place, private ownership was recognized only in the chiefs and the freemen. "In the *tingues* and mountainous districts—according to Father Placencia—they were not divided, except by the barangays." The towns were made up of *barangays*, at the head of which were the headmen called *datos*, *rajahs*, or *sultans*, according to the epoch.

If it is true that every *dato* regularly had under his jurisdiction not more than one hundred households, and that the *barangay* in its origin "was a family composed of parents and children, servants and relatives," who must have come to those shores

in boats called in Tagalog, *"balangay"*; and if it is true that "the lands occupied by them were divided in the whole barangay" or reserved them for the *barangay* collectively, it is reasonable to conclude that the ownership of public land remained at first in the *barangay* or in the chief thereof, passing from him afterwards to private individuals by virtue of partition. This partition was made only among freemen, and on the theory that, as head of the tribe, the chief had the ultimate disposition of its lands. And in consideration of this partition, those benefited thereby were under the obligation to render to him personal services or their equivalent in specie, according to the necessities of the time, in war or in peace. The original partition was naturally followed by mere occupation. And as the quantity of land was considered unlimited, on the one hand, and as the number of men engaged or willing to be engaged in their cultivation, on the other, was very small, the acquisition of public lands was of secondary consideration in the political economy of the time. The people being mostly engaged in fishing, or in the collection of the products of nature, the land was important only for the raising of *palay* and to a certain extent, of coconut and corn. It is not, therefore, strange that hardly any labor and capital was invested in lands, beyond what was required by the individual. Immovable property then was not so important as movable property. An arrow, a canoe or a piece of cloth had a greater value than a piece of land, no matter how large it might be. And this is true, because in economic develpment, movable property preceded immovable property in importance. Thus, laws relative to movable property at that time were more detailed and complete than laws referring to immovable property. It is, therefore, natural that laws relative to public lands at that time were customary in their nature. It was very simple, occupation being the ordinary mode of acquiring possession, which afterwards was converted into ownership. But this right of ownership did not have all the attributes of its modern prototype, because the people then did not have the complex necessities of modern life.

And if we should take into consideration, besides, the few individual necessities at the time, the absence of immigration, and that, if at all, the insignificant number of foreigners permitted to cultivate land had to acquire them either by purchase or by inheritance, it becomes more evident, at least, in my opinion, that it was absolutely unnecessary for those people to adopt written laws to regulate the acquisition of public lands. And considering that by the non-payment of debt, a freeman could be converted into a servant or slave, we can readily see that it was the personal services of the debtor and not his land that most interested the creditor, all of which shows the comparatively small importance of real property.

In the midst of this condition, the Spaniards arrived. With their arrival there was an impulse in the economic life of the country, and for the first time was implanted here a methodical land legislation. Although this legislation was based upon high and generous principles, it was nevertheless neither precise nor fixed as regards general policy, or in the procedure to make landed property secure. However, at that

time, it represented a complete legislation, and one of its provisions, that relative to partition or distribution, has some of the essential characteristics of the modern homestead.

In its development, this legislation presents three phases which also mark identical phases of economic development: (1) partition; (2) sale and adjustment (*composición*); and (3) settlement properly speaking. These phases, although different in the period of their chronological appearance, nevertheless existed and co-existed during the Spanish regime.

Partition belongs to the epoch of the discovery, foundation and settlement of the new lands in the Indies, as they were then called. The discovery of Christopher Columbus, the conquests of Hernan Cortes and Pizarro in America, and the daring undertaking of conquests and commerce of the Portuguese on the African coasts and in the Malay Archipelago, have produced among the principal countries of Europe, by social contagion, a collective psychology or obsession for new lands and new peoples beyond the seas. The Spaniards and the Portuguese were the forerunners in these undertakings of valor and sacrifice. Public opinion followed and encouraged them. The sovereigns gave then all kinds of support. The adventurous spirit, the product of centuries of warfare and militarism offered their life and sword to the church and the king. It was not the hope of gain, nor religion, nor fanatic service to kings which impelled men to explore unknown regions. It was the enthusiasm for conquests and discovery which pervaded society. In this epoch and in the midst of this atmosphere, were prepared and promulgated from time to time the famous Laws of the Indies, brief but comprehensive, which became the constitutional law of the then Spanish colonies; and which served as a picture of the commen desire, as can be seen particularly in land legislation, the spirit and tendencies of which were to encourage, give impulse and develop the discovery and settlement of new lands, and encourage emigration to the newly discovered lands, "for the purpose of engaging in the spice trade," said Father Urdaneta, or "with a view to the conversion to the Catholic faith of the new peoples," according to the testament of Isabel the Catholic, reproduced in Book I, tit. 10, bk. 6 of the Laws of the Indies.

The so-called Laws of the Indies divided persons into three principal classes, to whom in the first place lands were granted; (1) the discoverer, (2) the pacificator, and (3) the founder of new settlements. As regards the discoverers, whether their authority had been received directly from the king, as that of Magellan and Father Loaysa, or by delegation from him, either through the viceroys and *audiencies* of New Spain, as those of Ruy Vallalobos and Legaspi, or through the Governor-General of the Philippines, or its *Audiencia*, as in the case of D. Esteban de Figueroa for Mindanao, among the privileges granted to them to make discoveries and settlements, was included a grant of a part of the land discovered and settled, according as the discovery was made at the expense of the royal treasury or of the discover himself. In the discoveries made at the expense of the king, nevertheless, hardly any mention

was made of the grant of lands, as the rewards consisted rather, as in the case of Magellan, of the exclusive right to make discoveries, the fifteenth part of the revenues of two islands, the title of commander-in-chief of the fleet and a salary of fifty thousand *maravedises* annually. If the expedition was made, on the other hand, at the expense of private individuals, as in the case of Governor Gonzalo Ronquillo de Peñalosa, the discoverer had the right with respect to land, to have for himself three *encomiendas*, which could be subdivided into parcels and lots, farms and pastures, among his legitimate and natural children. Although generally speaking, the discoverer was at the same time the pacificator, founder and settler of the newly discovered lands, the Laws of the Indies, nevertheless, made the three distinctions as regards the concession of privileges. Now, examining the law pertinent to the grant of lands, it appears that the settler, who has established a settlement in accordance with the terms of the patent, might also found primogenitures out of the lands granted to him on which he might build and establish plantations, in addition to the gold and silver mines and other mining lands and pearl fisheries granted to him.

With respect to mere pacificators, the law makes no specific mention as to grants of land, from which we can infer that they were included among those generally entitled to partition, as the laws promulgated on this subject principally refer to ecclesiastics.

As regards the founders of settlements, the laws are more explicit and contain more details, in order perhaps, according to the language of the law, that "our vassals might be encouraged in the making of discoveries and settlements in the Indies;" and perhaps because the founders and settlers were pacificators at the same time.

Under the law there were three classes of founders and settlers. First, those who received their authority directly from the king, the viceroys and *audiencies* of New Spain, or from the governor-general and *audiencias* of the Philippines. Second, those private individuals who received lands from the principal settler or from the competent authority, and third, the emigrants who had the right to emigrate to the Philippines and to be considered as settlers.

A designated district or region is given to a founder or principal settler. This district was divided as follows: first, the places for the church and convent for the town square and for the public buildings were selected; and then, the town lots were set aside with their respective streets following always the plan of making the streets narrow in the hot places. After this, the exits or places for outlets were separated; then, the pastural grounds for cattle were next set aside; and afterward the places for private lands were designated. The rest of the district was further divided into four parts. One of these parts belonged to the founder of the town, who had the right of selecting his share, besides the right of obtaining four more square leagues outside of the town limits, if he had complied with all the conditions of his agreement or stipulation. The remaining three parts of the districts were divided into building lots, agricultural lands, and irrigation concessions and they were distributed among the

settlers by lot. To those settlers who had drawn up special agreements with the principal settler of the district or who had obtained license from the competent authority were conceded the right of obtaining building lots, agricultural and pastural lands to such number of *peonias* and *caballerias* as every one of them agreed and bound himself to improve, provided each share never exceeded five *peonias* and no more than three *caballerias* was given to anyone, taking into consideration the rank of the beneficiary. A *peonia* was a lot measuring 100 feet long and 50 feet wide and a *caballeria* measured 200 feet in length and 100 feet in width.

The fourth and last class had reference more to the mere settlers or emigrants that were not bound by any agreement of whatever nature. The law on this particular provides, "It is our desire that houses, building lots, lands, *caballerias* and *peonias* should be distributed to all those who have gone to settle new lands in those towns and places which the governors of the new settlement have assigned to them, distinguishing between the gentlemen and the common day laborers and all those who are entitled to a less degree of consideration; and they should be given increases and improvements taking into consideration; the quality of services so as to encourage among them the proper tillage of the land and the care in the breeding of animals." This gratuitous concession constituted the allotment or distribution of territory. Under this legislation, Legaspi undoubtedly gave lands as a royal reward to the Augustinian friars in Cebu and to their companions of expeditions in the other parts of these Islands, because in the decrees and laws of that time (1531 and 1575), the king ordered their viceroys, presidents and govenors in order "that with special care they should treat and favor these first discoverers, pacifiers and settlers of the Indies" and "that, those who have served us in the discovery, pacification and settlement of the Indies are to be compensated," and the lands were to be divided without extravagance among them and their descendents. The purpose and aim of the laws of this time is to stimulate the discovery, pacification, and settlement of the new towns in the Indies. To further these ends, lands were distributed without limitation or appraisement. When the Indies were discovered, lands, waters, forests and pastures were all abundant and the settlers were few, so the governors and the *cabildos* (chapters) of the cities distributed them according to their whims among those who had come and asked for them,"—thus stated the order approved in the royal decree of February 15, 1858. In order, however, to assure the life of the new colonies, the laws required that in each allotment the beneficiary should build and reside in the land for four years and he was not to cultivate or to have any concession in another town; that concessions were to be given to those discoverers and settlers who came to remain in the land; and that those who have come to the Philippines could not go away from it except when the law and the governor-general had given them permission to do so.

Liberal and protecting as these laws were, I do not believe that the first Spaniards had taken advantage of them nor had they made their provisions effective. With

the exception of Cebu, Manila, Nueva Segovia, Vigan, Nueva Caceres, Arebalo and other a very limited number of other places, I do not find any dates to assure me that new towns in the Philippines were established under registered contracts by the Spaniards, such as provided for by the laws of the Indies; nor had settlers or founders come with their registered contracts with the exception of the one already mentioned, Gonzales-Ronquillo de Peñalosa. To obtain a registered contract a sufficient amount of capital was needed. The Philippines was not only so far away and the voyage so long and dangerous, but moreover she did not produce the so much dreamed of nutmeg trade of which Friar Urdaneta made King Philip II believe that there was a sale of more than 600,000 ducats a year. The restriction for the emigration of merchants to the Indies was very cumbersome and onerous. In the same way emigration of foreigners was so restricted in terms as to be almost prohibitive. These facts contributed largely to the reasons why the much desired emigration of settlers as found in the laws was not realized. And those few, like soldiers and sailors, who came were not the proper people for colonizing. If there is taken into account the fact the supposed Spanish towns were required to be separated from those of the natives, it is easy to see that with the exception of the Spanish towns established near the Spanish garrisons or fortifications, which for some economic reason attracted the natives to settle near by, in the majority of cases the towns were organized in places occupied by the native families; the barrio was first to be organized and later the town. This town was a native town for there were very few Spaniards and most of these lived near the fortifications. The distribution of lands, therefore, hardly benefited those whom the law intended to benefit. Those few who could take advantage of them tried to compensate their troubles from the encomiendas. Naturally, if we take into account the scarcity of laborers; the little importance given to the soil, and also the lack of transportation facilities together with the scarcity of capital, the little money that the encomenderos received was never accumulated and used for improving agricultural productions which were to contribute to the economic development of these Islands, but it was exhausted for their daily use. "The encomenderos of these Islands are all very poor," Bishop Salazar said in 1853 and this statement was corroborated by Dr. Sande's saying that "the Spanish soldiers were poor." The only ones that became rich, said Mr. Retana, "were the Chinese, the governor-general and the alcaldes mayores, persons that were precisely indifferent with regard to the development of agriculture." I do not want to be understood as saying that among the Spaniards and their descendants no one took advantage of these distributions of land. The actual facts, however, seems to show that those new settlers who desired to dedicate themselves to agriculture instead of using their right of obtaining lands through distribution, which lands were supposed to have been separated from the Filipinos, later preferred in one way or another to have those lands already cultivated by the Filipino or those that were near to there where they could obtain labor to facilitate their work—those lands that were already yielding

products and that were near the market for these products. "We command," Philip IV said in Zaragosa in 1646, "that the grants of lands shall not be made to those Spaniards who have obtained their lands from Indians in contravention of our royal decrees or orders." Later on, in 1797, a royal order spoke of the frauds which were being committed under the pretext of the privileges of the Indians on account of the misuse with which the latter exercised their rights of leasing their lands to other Indians, mestizos or Spaniards. For the honor and glory of the Spanish kings, we ought to make it appear that from the very first laws promulgated suitable penalties were provided for punishing the violators of their provisions in order that the rights of natives would be respected, and under no cirumstznce the land owned and occupied by the natives could be taken away from them. As a consequence of this policy, it was ordered in the Law VI, Title I, Book IV of the Compilation of the Indies that in the agreement of discovery "the use of the word *conquest* is to be dropped and in its place are to be used those of *pacification* and *settlement* in order that no "force nor damage could be done to the Indias." "We ordered," said Philip II, in his decree of 1594, "that farms and lands granted to the Spaniards were to be so given that they would not prejudice the Indians and that those given away in prejudice and to the damage of their rights are to be returned to those who are entitled of them." "We order lastly", Philip IV said, in 1643 and 1646 "that there should be specially left to the Indians all that which belonged to them, whether owned individually or in common and also the waters, irrigations, and lands in which they have constructed dikes..... and under no excuse can they sell or transfer them. Under these laws the titles of possession of the Filipinos over their lands were confirmed, and not only were they so confirmed but they were also given the right to obtain lands under distribution "(repartimiento)". Divide among the Indians all that can be conveniently given, taking into consideration their immediate needs," Philip II said, "for tillage and farming purposes and also for breeding animals, adjudicating to them what they already possess and give them further what they still need." As such distributions of land (repartimientos) required elaborate administrative proceedings which resulted costly and consumed a great deal of time, it is therefore, not strange that whenever there was a need of starting improvements on a new space of ground the Filipinos as well as the Spaniards resorted to the easier method of mere occupation rather than that of distributive proceedings. In order to check this practice Philip II in his successive decrees in 1578, 1589, 1591 repeatedly maintained that the ownership of the Indies belonged to his patrimony and as a consequence the grants or disposition of the same was only possible through permission of the crown and he ordained that to the crown should be reverted all those lands possessed without just title. And by the royal decree of November 1, 1591, the authority of the governors and *cabildos* (chapters) to make distribution at their own discretion was revoked and it was there provided that grants of lands or farms for cultivation or for breeding animals were to be sold or disposed of by the royal officials in public sales. In

1735, although the expressed approval of the crown was previously required, nevertheless said order was revoked 19 years afterwards (1754), because it proved to be impracticable; and in its place it was newly ordered that in the gifts, sales and disposition of lands belonging to the royal patrimony, the authority to name assistants and sub-agents who were to carry out and perform the sale and conveyances of said lands, who, in turn, could appoint substitutes in those places and provinces far away from their residences was exclusively left in charge of the viceroys and presidents of the audiencas. By article 81 of the decree of 1786, it is provided that the (intendentes) sub-treasurers, are the sole judges concerning the sales, conveyances, and distributions of lands. And lastly, on March 28, 1789 the settlers were exempted from applying to the royal tribunal.

In spite of all these measures tending to decentralize the administrative organization in charge of the distribution of lands, in order to popularize the laws, and to lesson the expenses, and at the same time to facilitate and expedite the methods of acquisitions, the practice of mere occupation became more and more general.

Up to April 1883, we may say in synthesis, that the forms of acquiring public lands could be reduced into that of distribution and of sale, the first being gratuitous and the second onerous. As a supplementary means to correct the deficiencies of mere possession, the government grants based on prescriptive principles, which could be either gratuitous or onerous as the case may be, were introduced.

The idea of distribution of lands having been almost abandoned, because there was a need for the royal decree of August 6, 1899, in order to authorize the distribution of the uncultivated lands in the eastern half of the island of Negros, there was only left the sale and the grant methods.

The sales were governed primarily by the laws of the Indies and by the royal cedulas and decrees that were promulgated from time to time. At first, it required only the payment of a moderate price, but beginning from the royal decree of February 15, 1858, it was provided that if the price of the land exceeded 200 pesos the adjudication of same was always to be made at a public sale. This criterion was changed in the royal decree of January 19, 1883, which was ordered to be published in Manila in April 7 of the same year, and from this year instead of the vague and general provisions of the law of the Indies, we had a methodical legislation on sales with the neceesary classification of salable lands.

(To be continued)