CIVIL LAW UNDER THE AMERICAN FLAG

By JORGE BOCOBO,
Assistant Professor of Civil Law, University of the Philippines.

The British Empire and the American Republic have, in the course of their territorial expansion, impressed their political institutions on many peoples but have left the Roman civil law intact wherever they found it deeply rooted. Thus, Quebec, Canada, which was transferred in 1763 by France to England, has preserved its private law based on the laws, edicts and ordinances of France and the Custom of Paris, and its Civil Code, made effective in 1866, has adopted the spirit and framework of the French Code. As a result of the Boer War, the two Dutch Republics of Orange and Transvaal were annexed to the Empire of Great Britain, and by an Act of Parliament in 1909, these two territories, together with Natal and Cape colonies, were merged in a Legislative Union. The private law of this great commonwealth rests on Dutch civil law, which is of Roman origin,[1] although about one-half of the white population are British. Even Scotland, which lies at the very door of England and is so closely bound up with English civilization and destiny, has permanently adhered to the Roman law. Ceylon, Mauritius, and British Guiana have done the same. As for American territories, it is well-known that the State of Louisiana has retained her civil law. Porto Rico and the Philippines likewise continue to be governed by that jurisprudence which prevails in almost all the civilized countries of the world.

The purpose of this article is to trace in a cursory manner the development of law in Louisiana and certain other States, as well as the American territories above mentioned. An attempt will be made to show certain common tendencies in the unfolding of the law in these regions, which may be assigned to the contact between Anglo-Saxon and Latin civilizations.

LOUISIANA.

The history of the Mississippi Valley before the United States had obtained a firm and lasting foothold thereon, was a long-drawn struggle between Latin and Anglo-Saxon civilizations. France, Spain, England,

1. Encyclopaedia Britannica, vol. 25, p. 466.

and, later on, the United States, were the mighty actors in this mighty drama, which teems with splendid examples of energy and heroism. What is now the State of Louisiana, which lay at the mouth of the great river, was necessarily an important battleground of the slow but tremendous conflict.

From the very first stages of such strife for mastery, Spain was eliminated, for the explorations of De Leon, Pánfilo de Narvaez, and others met failure after failure. Thus, England and France were left alone to fight out every inch of ground. The early expeditions of Cabot furnished England with a color of title to the great northern continent, but those of Cartier and Champlain gave France ground for claiming the same territory. While the French held Canada and pierced far into the unknown wilds of the interior up the St. Lawrence and down the Mississippi Valley, the English colonies seemed to have been satisfied with the Atlantic seaboard. There was a marked difference in the colonization of the two peoples: on the one hand, there were the adventurous *coureurs de bois* who traded with the Indians and the French missionaries who sought to implant Christianity in dark savagery; on the other, the English settled in their different colonies to establish governments designed to safeguard their religious and civil liberties. The Frenchman, therefore, explored broad streches of land and came into close relationship with the natives, but the Englishman worked out his happiness in the settlement.

FRENCH COLONIZATION.

The early colonization of Louisiana proceeded from Canada. The French were allured by the stories told by Indians as to a great body of water to the west, which was believed by the former to have emptied into the "Western" Ocean. This, it was thought, would permit them to set up a trade system with China. The explorers Jean Nicollet, in 1634, and Sieur des Groseilliers, in 1658, and Fathers Ménard and Allouez, some years later, were among those who heard these accounts. But the greatest figure eventually came to the scene: Robert Cavelier de la Salle, a Norman settler near Montreal. He had been informed by certain Indians that in their region was the source of a river, called Ohio, which followed a westward course till it reached the sea. Such a story awakened in La Salle dreams of commercial expansion for his country, for he supposed that the way to the Pacific was at last to be found. He consequently began the daring task of exploring the vast territory to which he resolutely devoted the rest of his life. He followed the Ohio as far down as the site of Louisville, and, in 1670, he solemnly took possession, for France, of the vast territory "bounded on the one side by the seas of the North

and West and other side by the South Sea." Later, after making incessant wanderings and discoveries, he found out that the flow of the Mississippi did not end in the Pacific Ocean but in the Gulf of Mexico; to carve a huge empire for France out of the illimitable forests became therefore his cherished ambition. The hardships that he endured goaded him to still braver deeds and in the face of the most trying odds, he always kept before him the glory of his country and pushed on and on in the heart of Nature and amidst her elemental forces. On April 9, 1682, having reached the mouth of the Mississippi, he formally annexed the whole country including all the territories already discovered by the French as well as the Gulf Coast up to the River of Palms, naming it "Louisiana," after the then French sovereign, Louis XIV. Nothing of moment was done by the French Government until about 1698, when, for fear that the English King might seize the territory, it was decided that a party of colonists, under the able leadership of Pierre Le Moyne, Sieur D'Iberville, be sent out, the expedition sailing from Brest, France, on October 28, 1698. Four months later (March 2, 1699) the expedition found the mouth of the Mississippi River, and on March 9, the fearless explorer arrived at the site of New Orleans. The first settlement was planted in Biloxi in the same year. Three years afterwards (1712), Antoine Crozat, a wealthy merchant of far-seeing mind, obtained a charter from the King for exclusive trade rights throughout the whole French domain outside of Canada. The country was put under the government of Canada, it being also provided that the Custom of Paris and the laws, edicts and ordinances of France were to be followed in the new colony. The government of Louisiana was placed in the hands of a superior council, made up of the Governor, the Intendent and two agents of Crozat, and French colonization began in earnest. But the strict trade laws and Crozat's greed impoverished the early settlers. By a plan of John Law, who formed the Company of the West, which turned out to be a monumental fiasco, the number of immigrants from France was greatly increased. In 1724, the *Code Noir* was passed for the protection and humane treatment of slaves. Among the provisions of this Code, the following may be mentioned: The Roman Catholic faith was to be inculcated in the minds of the slaves. Those who were not properly fed or clothed could go the Attorney General of the Superior Council for aid. Children under 14 years of age could not be separated from their parents. Manumission was allowed, with the permission of the Superior Council.

THE ADVENT OF SPANISH REGIME.

As a result of the war between England and France, Canada, together with all the French territory east of the Mississippi, was ceded to the former country by the Treaty of Paris signed in 1763. On the same day, by a secret treaty, France also transferred sovereignty in Louisiana to Spain, mainly to prevent the English from occupying it. The people of Louisiana did not know of this change till the next year, when the colonists were plunged into despair and discontent. They implored the French King for protection but received no encouragement.

In March, 1766, Don Antonio de Ulloa, who had come from Havana, arrived in a frigate to cause Spanish sovereignty to be recognized, but as he had no sufficient force behind him, he found himself utterly helpless. However, on August 18, 1769, Don Alexander O'Reilly, an Irishman in the Spanish military service, the first Spanish Governor of Louisiana, appeared in New Orleans with a strong reinforcement and the colony was constrained to submit. The boundless tact and the broad statesmanship of this governor won the people's loyalty and strengthened Spanish dominion. He at once proceeded to reorganize the government along permanent lines. He abolished all the then existing French laws, except the *Code Noir*, already mentioned. In lieu of the old system, he implanted the Spanish law, by publishing in November, 1769, in the French language, an extract from the whole body of Spanish jurisprudence in order to furnish elementary knowledge of the laws of the new sovereign. The *Nueva Recopilacion*, promulgated in 1564, was then the latest code of Spain, designed to systematize the countless statutes, pragmatics, ordinances, capitulations of Cortes and letters in Council, although in point of fact, the compilation was a complete failure, making the laws of the Kingdom all the more confused, and the observance of previous bodies of laws, such as the *Fuero Juzgo* (XIII century), *Fuero Real* (XIII century), *Las Partidas* (XIII century), *Ordenamiento de Alcalá* (XIV century), and *Leyes de Toro* (XVI century), was therefore continued.

As to the effect on the French law of this step taken by the new Governor, the Supreme Court of Louisiana said in 1816:

> "The publication, followed from that moment by an uninterrupted observance of the Spanish law, has been received as an introduction of the Spanish Code in all its parts, and must be considered as having repealed the laws formerly prevailing in Louisiana, whether they had continued in force by tacit or express consent of the government." (*Beard* v. *Poydras*, 4 Mart. Rep. 349, 368.)

AMERICAN SOVEREIGNTY.

Three decades passed and by the treaties of San Ildefonso of October 1, 1800 and March 21, 1801, Spain ceded the territory of Louisiana to France, but the agreement was not signed by the Spanish king until October 15, 1802. Colonial Prefect Laussat arrived at New Orleans on March 26, 1803, and on May 18, the change of sovereignty was formally announced by the Spanish authorities to the people of Louisiana. However, when Laussat, on November 30, 1803, solemnly took possession of the territory in the name of France, he at the same time declared that the country had been transferred to the United States, by the Treaty of Paris signed April 30, 1803. So that the return of French sovereignty did not result in the promulgation of any French law to speak of. The law of Louisiana when the United States acquired the territory was therefore Spanish. When the treaty of cession was discussed in the Senate for ratification in the Fall of the same year, New England senators opposed the acquisition of a territory inhabited by a foreign race who could not be assimilated. When appropriation for the execution of the treaty was debated in the Lower House, a similar objection was made.

On December 20, 1803, W. C. C. Claiborne, Governor of the Mississippi Territory, was received in New Orleans, having been instructed by Jefferson to set up a provisional government. Three months later (March 26, 1804), Congress organized a portion of the province into a territory, calling it the Territory of Orleans. The chief executive was appointed by the President of the United States and the legislative power was vested in the Governor and a Legislative Council of thirteen freeholders. The judiciary system consisted of a district court of the United States, a Superior Court and such inferior courts as might be created by the Legislative Council subject to the approval of Congress. The first officials appointed under the Act of Congress were Claiborne, Governor; Brown, Secretary; Bellechasse, Boré, Cantrelle, Clark, Debuys, Dow, Jones, Kenner, Morgan, Poydras, Roman, Watkins, and Wikoff, members of the Legislative Council; Duponceau, Kirby and Prevost, judges of the Superior Court; D. A. Hall, district judge of the United States; Dickenson, district attorney; and Le Breton d'Orgenois, marshal.

CONFLICT BETWEEN ANGLO-SAXON AND LATIN INSTITUTIONS.

The new order of things was highly unpopular. The people were denied the right to elect their own lawmakers, when other territories had been allowed to do so; the American settlers looked at the inhabitants with an air of superiority, and the misconduct of certain officials from the North shocked the idealistic and sensitive Creoles; English was the official lan-

guage of all the branches of the government, including the courts, but the people heartily disliked the "foreign idiom"; and the Louisianians, whose customs and institutions were in many respects antagonistic to those of the new rulers, stoutly defended them against the invasion of new ones. This struggle also took place as regards the legal system. As will be seen later, civil law, as distinguished from commercial and criminal law, successfully resisted the onset of the new legal institutions; pleading in civil cases is also of civil and not common law, origin. The efforts to plant the civil law failed from the very beginning. As Chief Justice Eustis said in *Succession of Franklin* (7 La. Ann. 395, 418):

> "At the commencement of the dominion of the United States in Louisiana, some of the lawyers from the old States were disposed to introduce here the system of laws with which they were familiar. * * * Efforts were not spared by this portion of the profession to introduce the common law, as it has since been introduced and prevails in other States, whose territory formerly belonged to France and Spain.
>
> "But of the members of the bar conversant with the common law, the most eminent did not favor its introduction as a general system, and the consequent exclusion of the civil law. * * *
>
> "The view of these distinguished men, reflecting the evident sense of the people, were impressed on the legislation of the State. The subject was deemed of such moment, that it was not trusted to ordinary legislation; and hence the provisions, in both the Constitutions of 1812 and 1845, which prohibit the introduction of any system of laws by general reference.
>
> In this condition of opinion the Codes of 1808 and 1825 were prepared and enacted."

THE CODES.

These codes will now be treated. The territorial legislature by a resolution approved in June 1806, commissioned James Brown and Moreau Lislet, both of whom were distinguished lawyers, to compile and prepare a civil code. The legislature positively enjoined them to make the civil law by which the territory was then governed "the groundwork of said code," and as the civil law of Louisiana was Spanish, this first code was an embodiment of Spanish jurisprudence. It is erroneously thought that it was a mere copy of the Napoleon Code. On this point, the words of as high an authority as the Hon. E. T. Merrick, late Chief Justice of the Supreme Court of Louisiana, should drive away any doubt:

> "A great misapprehension exists in the minds of many in regard to the civil code of Louisiana. It is supposed to be but a re-enactment of the Napoleon Cde. It is true the French code preceded our Code of 1808 by five years, and a *projet* of it (for the Napoleon Code, as adopted, had not reached the territory) may have suggested

to our legislators the necessity of reducing *the laws, which were in the Spanish language,* a tongue foreign to the largest portion of the citizens of Louisiana—Americans, or those who were of French descent—into a single code, which should be published in French and English. * * *

"There are very many articles in the civil code of 1808, as amended in 1825 and continued by the recent revision of 1870, which are identical with articles in the Napoleon code, and lead to the supposition that whenever the compilers of the code of 1808 found an article in the *projet* of the French code, which *fully expressed the sense and meaning of a provision of the law of Louisiana,* it was appropriated. In other instances, the French text was amended to conform to our law and so adopted. In others, the Spanish law was first written in French and translated into English. *Nevertheless, the laws of Louisiana, where differing from the Napoleonic Code, have been preserved,* and thus the civil code contains some provisions in contrast with the Napoleon Code."(2)

The first code was approved by the legislature on March 31, 1808. But the promulgation of this code did not uproot the Spanish law, for it was expressly provided that the code abrogated the ancient laws only when the same were contrary to the code or irreconcilable therewith. Thus, Spanish laws were still cited and applied together with the Louisiana Civil Code, or in the absence of any express provision of the code.(3)

That portion of the *Partidas* which was still in force in Louisiana was translated and published in 1819 by order of the Legislature.

Messrs. Livingston, Dervigny and Moreau Lislet were authorized by the legislature on March 14, 1822, to revise the code of 1808. The revised code was sanctioned by the legislature on April 12, 1824, and promulgated in 1825. To aid this new code, and bring about a wider comprehension of the laws, a remarkable act was passed. Lawyers felt that the enforcement of Spanish law wrought difficulties out of number, for even in Spain at that time the laws were in a labyrinthical state. Hence, the "great repealing act" of March 25, 1828, provided that all the civil laws which were in force before the promulgation of the civil code of 1825 were repealed. But even this radical law could not demolish the fundamental principles underlying all positive laws. In the leading case of *Reynolds v. Swain et al.,* (13 La. 193, 198), the plaintiff sought to recover $1,500, the same being the rent due for the whole term of a lease contract entered into between the plaintiff and the defendants. The latter abandoned the

2. The Albany Law Journal, vol. 3, p. 270.
3. Saul v. Creditors, 5 Mart. Rep. (N. S.) 576.

premises after two months, whereas the period stipulated was one year. Judgment was rendered in favor of the plaintiff, which judgment was affirmed by the Supreme Court. Judge Martin, speaking for the court, said:

> "In the case of *Christy* v. *Cazanave,* 2 Martin, N. S., 451, this court held, that if the tenant abandoned the premises during the lease, he is bound for the rent for the whole term at once. It has been contended that this decision took place under the civil laws of this state, which were repealed in 1828. * * *
>
> "The repeal spoken of * * can not extend beyond the laws which the legislature itself had enacted; for it is this alone which it may repeal. * * * It can not be extended to those unwritten laws which do not derive their authority from the positive institution of any people, as the revealed law, the natural law, the law of nations, the laws of peace and war, and those laws which are founded on those relations of justice that existed in the nature of things, antecedent to any positive precept.
>
> We, therefore, conclude, that the Spanish, Roman, and French civil laws, which the legislature repealed, are the positive, written, or statute laws of those nations, and of this state; and only such as were introductory of a new rule, and not those which were merely declaratory—that *the legislature did not intend to abrogate those principles of law which had been established or settled by the decisions of courts of justice.*"

The principle thus announced lent solidity and abiding strength to the foundation rules of the civil law which to-day continues to be the bedrock of the law of persons, property and contracts in the State of Louisiana.

The civil code was revised in 1870, this statute being the present code on civil matters in that State. The division of this code is as follows:

Book I. Of Persons.

Title I, Of the Distinctions of Persons.
" II, Of Domicile and the Manner of Changing the Same.
" III, Of Absentees.
" IV, Of Husband and Wife.
" V, Of Separation from Bed and Board and Of Divorce.
" VI, Of Master and Servant.
" VII, Of Father and Child.
" VIII, of Minors.
" IX, Of Persons Incapable of Administering their Estates, Whether On Account of Insanity or Some Other Infirmity, and Of their Interdiction and Curatorship.
" X, Of Corporations.

Book II. Of Things and Of Different Modifications of Ownership.

Title I, Of Things.
" II, Of Ownership.
" III, Of Usufruct, Use and Habitation.
" IV, Of Predial Servitudes or Servitudes of Land.
" V, Of Fixing the Limits and Surveying of Lands.
" VI, of New Works, the Erection of Which Can be Stopped or Prevented.

Book III. Of the Different Modes of Acquiring the Ownership of Things.

Title I, Of Successions.
" II, Of Donations Inter Vivos (Between Living Persons), and Mortis Causa (In Prospect of Death).
" III, Of Obligations.
" IV, Of Conventional Obligations.
" V, Of Quasi Contracts, and Of Offences and Quasi Offences.
" VI, Of the Marriage Contract, and Of the Respective Rights of the Parties in Relation to their Property.
" VII, Of Sale.
" VIII, Of Exchange.
" IX, Of Lease.
" X, Of Rents and Annuities.
" XI, Of Partnership.
" XII, Of Loan.
" XIII, Of Deposit and Sequestration.
" XIV, Of Aleatory Contracts.
" XV, Of Mandate.
" XVI, Of Suretyship.
" XVII, Of Transactions or Compromise.
" XVIII, Of Respite.
" XIX, Of Arbitration.
" XX, Of Pledge.
" XXI, Of Privileges.
" XXII, Of Mortgages.
" XXIII, Of Occupancy, Possession and Prescription.
" XXIV, of the Signification of Sundry Terms of Law Employed in this Code.

It is interesting to note that while the background of Louisiana civil law is Spanish, decisions of the French Court of Cassation and the opinions of French writers have greatly moulded the decisions of Louisiana courts.

As the court said in *Reynolds* v. *Swain, supra,* "It is the daily practice in our courts to resort to the laws of Rome and France, and the commentaries on those laws, for the elucidation of principles applicable to analogous cases." Probably this preference for French law may be ascribed in part to the fact that the French language is better known in the State than Spanish, and that the Latin inhabitants are mostly of French origin.

It remains for the writer to mention the laws on other subjects.

PENAL LAW.

Criminal law and criminal procedure are based on English jurisprudence. In fact, this was the unequivocal policy from the very beginning of American government in Louisiana. As early as 1805, before the Civil Code was promulgated, a general statute on crimes and misdemeanors was enacted by the territorial legislature, this emphatic clause in section 33 thereof being added:

> "All the crimes, offences, and misdemeanors hereinbefore named, shall be taken, intended and construed according to and in conformity with the law of England; and the forms of indictment (divested however of unnecessary prolixity), the method of trial, the rules of evidence, and all other proceedings whatsoever in the prosecution of the said crimes, offences and misdemeanors, changing what ought to be changed, shall be, except as is by this act otherwise provided for, according to the said common law."

There was a curious feature of this act which might be mentioned: while it comprehensively defined many crimes and misdemeanors, yet in regard to many well-known crimes, such as murder, robbery, burglary, arson, rape, forgery, it merely referred to them by name. Despite the opposition of many, the clause has been preserved. But, as to the description of crimes by reference, it is an established rule in the State that only the crimes enumerated in the Act of 1805 could be punished, without a definition. Thus, in *State* v. *Gaster,* 45 La. Ann. 636 (1893) it was held that section 869 of the Revised Statutes, punishing "misdemeanors in office" without stating the nature of such crime, was violative of the State Constitution, because this crime was not named in the Act of 1805 or in any other statute of Louisiana. The courts have likewise laid down the principle that section 33 of the act of 1805 introduced the criminal law of England as it stood in that year, together with the acts of Parliament passed theretofore, amending or repealing common law rules.(4)

4. State v. McCoy, 8 Rob. 545.

COMMERCIAL LAW.

The economic development of Louisiana is and has been since the Louisiana Purchase vitally connected with that of the rest of Union. Hence, her law regulating business relations is the law of the other States. Negotiable instruments, maritime contracts, bankruptcy, etc., are governed by the same general principles obtaining in the whole Nation. In accordance with a resolution of the Legislature in 1822, a proposed Code of Commerce was drafted but never given legislative sanction.

ADJECTIVE LAW.

Criminal procedure, as already pointed out, is similar to that of the other States.

Civil procedure was first regulated by the Act of 1805 which derived its principles from the Spanish procedural law. A subsequent code of practice was promulgated in 1825, revised in 1870. The State of Louisiana occupies a peculiar position not only with respect to her civil law but also as to her civil procedure, both of which are the outgrowth of Spanish jurisprudence.(5) The baffling complications and the stubborn conflicts resulting from the vindication of substantive rights under one system of law through the instrumentalities of a mode of pleading which comes from another legal source, must have been among the causes which moved the legislators of Louisiana to retain at least in large measure Spanish procedural methods.(6)

The rules of evidence, in civil and criminal cases, proceed from the English common law.

Before dropping the consideration of Louisiana law, we might in passing advert to the use of legal terms in that State. The Louisiana bench and bar in their decisions and pleadings in *English* naturally employed technical names that are foreign to the common law advocate. The writer has collected in the footnote a number of such words, hoping that we in the Philippines might adopt some of them, which appear in the Louisiana Civil Code and reports; terms employed in the Washington translation in use here are also inserted.(7)

OTHER STATES.

Michigan.

As has been said, in 1763, France ceded to England all her possessions and claims east of the Mississippi, which included what is now the State of

5. See Hephurn, Development of Code Pleading, p. 15, note.

6. These same problems are not unknown to the lawyer in the Philippines, although perhaps the expedition of suits secured by the present practice in the islands greatly outweighs such difficulties.

7. Words and phrases referred to: [see next page.]

Michigan. This area passed to the American people as a result of the War of Independence. It was made the Territory of Michigan in 1805 and admitted to the Union in 1837.

When French explorers and colonists occupied the territory, they of course took with them their own laws. It is said that during the first years of American régime, a majority of the litigants, witnesses and jurors could not understand English, so the French language was often used in

SPAIN	LOUISIANA	PHILIPPINE ISLANDS
	PERSONS	
Patria Potestas	Paternal authority	Parental authority
Filiacion	Filiation	Filiation
Tutela	Tutorship	Guardianship
Tutela dativa	Dative tutorship	Guardianship by appointment
Protutor	Under-tutor	Protutor
Legitimacion	Legitimation	Legitimation
Reconocimiento de un hijo natural	Aknowledgment of an illegitimate child	Acknowledgment of natural children
Alimentos	Alimony	Support
	PROPERTY	
Bienes inmuebles	Immovables	Real property
Bienes muebles	Movables	Personal property
Propiedad	Ownership	Ownership
Derecho de accesion	Right of accesion	Right of accession
Adjunción	Union of accesion to principal	.....
Especificación	Specification	.....
Mezcla ó conmistión	Confusion	.....
Usufructo, uso y habitación	Usufruct, use and habitation	Usufruct, use and occupancy
Servidumbres	Predial or landed servitudes	Easements
Servidumbre de medianeria	Wall in common	Party walls
Servidumbre de paso	Right of pasage and of way	Right of way
Servidumbres voluntarias	Conventional or voluntary servitudes	Voluntary easements
Servidumbres de luces y vistas	Servitudes of view and light	Easements of light and view
Servidumbres discontinuas	Discontinuous servitudes	Intermettent easements
Diferentes modos de adquirir la propiedad	Different modes of acquiring the ownership of things	Different ways of acquiring ownership

court.(8) But the common law of England was from the dawn of American government introduced. The territorial legislature in 1810 expressly abrogated the Custom of Paris, putting the English common law in its stead.

Texas.

The territory of the Lone Star State was formerly under Spanish domination. After the Mexican Revolution against Spain, it was made a part of the Mexican Republic, which was set up in 1824. From this time on, American citizens began to settle in Texas, which finally severed her political bonds with Mexico in 1836, and established a republic. After several years of separate existence, Texas was admitted to the Amer-

---

SUCCESSIONS

SPAIN	LOUISIANA	PHILIPPINE ISLANDS
Sucesion legitima	Legal successions	Legal successions
Repudiación de la herencia	Renunciation of succession	Repudiation of the inheritance
Beneficio de inventario	Benefit of inventory	Benefit of inventory
Derecho de deliberar	Term for deliberating	Right to deliberate
Desheredación	Disinherison	Disinheritance
Herederos forzosos	Forced heirs	Heirs by force of law
Legitima	Legitime or legal portion	Legal portion
Colacion	Collation	Collation
La parte de libre disposicion	Disposable portion or disposable *quantum*	Free part

OBLIGATIONS

Contratos onerosos	Onerous contracts	Contracts involving a valuable consideration
Error	Error	Error
Objeto de los contratos	Object of contracts	Object of contracts
Causa de los contratos	Cause of contracts	Consideration of contracts
Obligacion de dar	Obligation of giving	Obligation to give
Obligacion de hacer o de no hacer	Obligation to do or not to do	Obligation of doing or not doing
Caso fortuito	Fortuitous event	Fortuitous event
Obligaciones puras	Simple obligations	Pure obligations
Condicion suspensiva	Suspensive condition	Condition precedent
Condicion resolutoria	Resolutory or dissolving condition	Condition subsequent
Condicion potestativa	Potestative condition	Purely compulsory condition

8. American Law Review, vol. 19, p. 623.

ican Union in 1845. In the meantime, the Texan Congress had passed laws which are of intense interest in connection with the subject of this article. Spanish and Mexican law was in force at the time of the separation. In the very first year of Texan independence, the Congress of Texas introduced the English law on evidence, (December 20, 1836). By the Act of January 20, 1840, the Texan Congress adopted the common law as a system so far as it was not inconsistent with the Texas constitution and laws.

However, this act did not completely wipe out the Mexican or Spanish law. Thus, the laws of forced heirship were observed until they were

---

OBLIGATIONS—Continued

SPAIN	LOUISIANA	PHILIPPINE ISLANDS
Condicion casual	Casual condition	Casual condition
Condicion mixta	Mixed condition	Mixed condition
Obligaciones a plazo	Obligations with a term	Obligations with definite periods
En mora	*In mora*	.....
Obligaciones conjuntas	Conjunctive obligations	.....
Obligaciones alternativas	Alternative obligations	Alternative obligations
Obligacion mancomunada	Joint obligations (See 51 La. Ann. 1484; 52 La Ann. 213; Art. 2086, La. C. C.)	Several obligations
Obligacion solidaria	Obligation *in solido* (See arts. 2088 and 2091; La. C. C.)	Joint obligation
Obligaciones divisibles	Divisible obligations	Divisible obligations
Obligaciones indivisibles	Indivisible obligations	Indivisible obligations
Obligaciones con clausula penal	Penal obligation or obligations with penal clauses	Obligations with a penal clause
Pago o cumplimiento	Payment or performance	Payment
Imputación de pagos	Imputation of payments	Application of payments
Ofrecimiento del pago y consignacion	Tender of payment and consignment	Tender of payment and consignation
Cesión de bienes	Cession or surrender of property	Assignment of property
Condonación de la deuda	Remission of the debt	Remission of debts
Confusion de derechos	Confusion of rights	Confusion of rights
Pérdida de la cosa debida	Loss of the thing due	Loss of the thing due
Lesion	Lesion	*Lesion*

abolished by the Act of the Legislature of July 24, 1856, a decade after the admission of Texas as a State. And even at the present time, the system of community property of husband and wife obtains in that State.(9) Sec. 2968 of the Texas Civil Statutes: provides "All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, shall be deemed the common property of the husband and wife, and during the coverture may be disposed of by the husband only."

OBLIGATIONS—Continued

SPAIN	LOUISIANA	PHILIPPINE ISLANDS
Capitulaciones matrimoniales	Matrimonial agreements	Marriage contract
Donaciones por razon de matrimonio	Donations made in consideration of marriage	Gifts by reason of marriage
Dote	Dowry; dotal property	Dowry
Bienes parafernales	Paraphernal or extradotal property	Paraphernal property
Sociedad de gananciales	Partnership or community of acquets or gains	Conjugal partnership
Contrato de compra y venta	Contract of Sale	Contract of purchase and sale
Entrega	Tradition or delivery	Delivery
Saneamiento en caso de eviccion	Warranty in case of eviction	Warranty in case of eviction
Vicio redhibitorio	Redhibitory vice	Hidden defect or redhibitory vice
Retracto convencional	Right of redemption	Conventional redemption
Permuta	Exchange	Exchange
Reconducción	Reconduction	New lease
Censos	Rents	Annuities
Mandato	Mandate; procuration; power of attorney	Agency
Comodato	Commodatum or loan for use	Commodatum
Simple prestamo	Mutuum or loan for consumption	Simple loan
Deposito	Deposit	Depositum
Secuestro	Sequestration	Sequestration
Contrato aleatorio	Aleatory contract	Aleatory contract
Fianza	Suretyship	Security
Transacción	Transaction	Compromise
Compromiso	Submission	Arbitration
Concurso	Respite	Concurrence of credits.

9. Some other States, such as California and Washington, have followed the civil law on this subject.

The other States which have been under the sway of the Spanish, French, or Mexican law will not be examined. Suffice it to say that they have also abandoned the civil law.

Porto Rico.

If Louisiana is plenteous in valuable lessons to the student of Philippine jurisprudence, Porto Rico is no less instructive to him because of the many similarities in the political organization of the two countries before and after the implantation of American sovereignty.

Porto Rico and other islands then under Spanish sovereignty in the West Indies, together with Cuba, the Philippines and Guam, were at the the close of the Spanish-American War, ceded to the United States under the Treaty of Paris of 1898. During the military government (October 18, 1898 to May 1, 1900), among the changes made were the reorganization of the courts and certain alterations in criminal and civil procedure. Section 8 of the Organic Act of Porto Rico approved by Congress on April 12, 1900, provided that the "laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent and in conflict with the statutory laws of the United States not locally inapplicable or the provisions hereof."

A Commission appointed by President McKinley to revise and compile the laws of Porto Rico was in operation in the years 1900 and 1901. The Legislative Assembly, composed of the Executive Council and the House of Delegates, in the Act of 1901, created another Commission to codify the Porto Rican laws. At the present time, Porto Rico has a revised Civil Code, and new Political Code, Penal Code, Code of Civil Procedure and Code of Criminal Procedure.

CIVIL LAW.

The Civil Code of Porto Rico as revised is practically the same as the original Spanish Civil Code, in striking contrast with ours, which has been so radically, not to say unskillfully, altered and patched up that it may be said to have virtually lost its name as a code—which implies a logical and scientific arrangement and a harmonious laying down of principles—and is now but a mass of detached and often conflicting provisions. The only important changes in the Porto Rican Code are the following:

1. Private corporations and associations not for pecuniary profit are regulated by two acts of March 9, 1911.

2. Title IV, Book, I, regarding marriage has been modified.

Among the changes we may mention these: Marriage is a civil institution originating in a civil contract.(10) Procedure in the celebration of marriage must follow the Act of March 10, 1904. While the husband is still the administrator of the conjugal property,(11) it is nevertheless provided that "the husband and wife shall have the right to manage and freely dispose of their respective separate estates."(12) "The wife may contract, and appear in court, in all cases referring to the defense of her own rights and property, to the discharge of *patria potestas,* guardianship or administration conferred on her by the law, and to the exercise of a profession, employment or occupation."(13) The husband can not give, sell or bind for a consideration the real estate of the conjugal partnership, without the express consent of the wife,(14) which is different from the Spanish law.(15) Provisions regulating paraphernal property have been eliminated. Absolute divorce has been introduced, for in section 173 it is stated that "a divorce carries with it a complete dissolution of all matrimonial ties, and the division of all the property and effects between the parties to the marriage."

3. The articles touching legitimation by royal concession have been eliminated.

4. The definition of natural children has been modified and is now as follows: "Natural children are those born out of wedlock, from parents who, at the moment when such children were conceived *or were born* could have intermarried with or without dispensation." It will be observed that, save as regards dispensation, this is the concept of natural children according to Law 11 of Toro.

5. Articles on the proof of filiation have been expunged.

6. Protutorship and the family council have been done away with.

7. Civil obligations, arising from crimes and misdemeanors, are governed by the Civil and not by the Penal Code.

From the foregoing it can be seen that the civil law subjects now wholly or partly regulated by American laws in the Philippine Islands are still governed by the Spanish Civil Code in Porto Rico. The following matters are entirely preserved or slightly modified in that island:

1. Presumption of legitimacy.
2. Adoption.
3. *Patria potestas.*

---

10. Sec. 129.
11. Sec. 159.
12. Sec. 160.
13. Sec. 161.
14. Sec. 1328.
15. Art. 1413, Spanish Civil Code.

4. Tutorship.

5. Emancipation.

6. Division of property held in common.

7. Form and execution of wills, except that military and naval wills are no longer separately recognized.

8. Executors.

9. Acceptance and repudiation of inheritance; benefit of inventory and right to deliberate; division of inheritance; effects and rescission of such division, and payment of hereditary debts.

10. Proof of obligations, but American law of evidence is found in the Act of March 9, 1905.

11. Concurrence and preference of credits.

12. Prescription of ownership and other real rights, and of actions.

OTHER LAWS.

Certain portions of the Code of Commerce are still operative, but others have been superseded by the acts of the Legislative Assembly and by the navigation, bankruptcy and other laws of the United States extended to Porto Rico.

The Spanish Penal Code is no longer in force. The new Penal Code derives its doctrines from Anglo-American fountainheads. In this respect, it is significant that Louisiana and Porto Rico have pursued the same line of action.

Civil procedure rests substantially on the same modes of proceedings in the "code" States, as distinguished from the "common law" States. The Code of Criminal Procedure has in like manner discarded the antiquated and unwieldy Spanish methods in criminal matters. Its sources are the Code of Criminal Procedure of California and Montana.(16)

Evidence is mostly English in character.

The Spanish Mortgage Law as applied to Cuba, Porto Rico and the Philippines is still observed. The Act of March 10, 1904, provided for the organization of registries of property.

The Spanish Law of Waters of 1877(17) has been expressly preserved by an Act of the Legislative Assembly, approved March 12, 1903. This law transferred the duties of officials under the Spanish government to those created by American sovereignty. It would be advisable to take the same step in the Philippine Islands, for while the Irrigation Act states in section 51 that the existing *Ley de Aguas* shall continue in force, it is only through an unsafe process of conjecture that lawyers can judge who are called upon to carry out the administrative provisions of the latter.

16. Rowe, The United States and Porto Rico, p. 161
17. Ours is the Law of Waters of 1866.

PHILIPPINE ISLANDS

It were annoying to the reader to have to follow a lengthy account of the already known changes made in the Spanish laws in the islands. For our purposes, a mere summary will be sufficient. The Civil Code has suffered modifications by the publication of the Code of Civil Procedure which introduced new rules of guardianship, administration of decedents' estates, evidence and prescription. Those parts of the Mercantile Code relating to *sociedades anónimas*, commercial papers, insolvency and prescription have been replaced by Act No. 1459, the Negotiable Instruments Law, the Insolvency Law, and the Code of Civil Procedure, respectively, all of which originate from the American law. As for the Spanish Penal Code, the Commission has passed many Acts on crimes, according to American models. Our entire adjective law is likewise drawn from American sources. Political law is, of course, also patterned after American standards.

CONCLUSION

Recapitulating, we have seen that in Louisiana, Porto Rico and the Philippines, where the American flag has been raised, the civil law has withstood all attempts to supplant it. On the other hand, it has disappeared from the other States where it formerly obtained. Adjective law has readily yielded to innovation. In public offences, Louisiana and Porto Rico immediately took up the principles anchored on Anglo-Saxon liberty and government, whereas the Philippines still obeys to a considerable extent Spanish jurisprudence. As for things commercial, Louisiana accepted American law; in Porto Rico and the Philippine Islands there is a decided leaning toward the same policy.

The reasons for these tendencies of legislation are not far to seek. In the shaping of juridical growth in a country where two distinct civilizations come face to face, there are certain principles which human foresight and general need have established. Such truths make for an orderly development of legal institutions and the jurist who ignores them is making a grievous mistake, for no one can restrain the operation of natural forces, in law as well as in other manifestations of social life.

The civil law, in the midst of the sweeping reforms in other departments of the legal structure, has demonstrated a remarkable stability and firmness. Why? It is commonplace to say that law is the result of social conditions, but it is true nevertheless. Now, the civil law affects the relations between husband and wife, and between parent and child; it has to do with the holding and enjoyment of property; it deals with the ways of dividing inheritance, and it regulates the general transactions of the inhabitants. It is the law that becomes part and parcel of the

life of the community and is woven into the social fabric, more than any other law. It is the law that is welded into the people's affections and prejudices. Hence, the citizens may look even with indifference at the transformation of the law in other matters, but they will not endure any substantial change in their civil law. The new government can not impose a new system of family, property, successional and contractual law because it can not by legislation prescribe new customs and new habits of thought. It might as well enact a law compelling every citizen to speak the language of the new sovereign.

But the evident adaptability of the other branches of the law is no less interesting than the intractableness of the civil law. The acceptance of English law so far as commercial dealings are concerned is an impelling necessity, in view of the deep-seated economic relations which are naturally begotten by the political connection between the mother country and the colony. Spanish procedure and evidence are confessedly inferior to American methods; moreover, they are inseparably allied with the administration of justice for which the new régime is responsible. Hence, the adoption of American practice and proofs is a logical measure, if not an imperious want. Regarding crimes and misdemeanors, Louisiana and Porto Rico, as already pointed out, have cast their principles in English moulds, while the Philippines, strange to say, remains chiefly under Spanish influence. The writer might venture the statement that we in the islands have not been as discerning and consistent as the people of Louisiana and Porto Rico. Criminal law is concededly public law; in the last analysis, it is political law as well. It directly and immediately involves the liberty of the citizen and the untramelled enjoyment of his property. It aims at a proper maintenance of State security and the peace of the inhabitants. It is, like the laws organizing the political divisions and sub-divisions of the government, a practical application of the ideas of liberty and constitutional theories of the mother country. Notwithstanding these unquestionable propositions and despite the examples of Louisiana and Porto Rico, the Philippines has clung to a surprising and anomalous attitude. The implantation of American sovereignty carried with it the establishment in the archipelago of those maxims of individual rights which constitute the legitimate pride of the Anglo-Saxon race. And yet the American government still observes a Penal Code which, however scientific, falls short in many respects of the liberal standards of the English-speaking world. To prove this, it is sufficient to remind the reader of the fact that it has been necessary for the Philippine Commission to pass new acts, and for the courts to reject many articles as being repugnant to American

institutions.(18) It is therefore to be hoped that in the new Penal Code about to be submitted to the Legislature, we may draw some lessons from Louisiana and Porto Rico. The civil law is our sacred legacy from Spain and the ancient learning of Rome, and judging from the experience of other countries, it will survive all innovations to be wrought here. But the penal law of Spain, if we value English liberties, is doomed to fall. Its underlying maxims must go from these shores, as they have passed into history in Louisiana and Porto Rico at the bidding of American Democracy.

The writer will not conclude without taking the liberty to suggest that we in the Philippines take a deeper interest in the civil law of Louisiana, which is at bottom Spanish. Set up about a century and a half ago, it has had free scope. The Louisiana Civil Code is over one hundred years old and the Louisiana courts, made up of such men as Francois Xavier Martin, George Eustis and Edward Bermudez, have admirably propounded its foundation principles and its various details, thus giving a rich and lasting contribution to the civil law of Rome. To the lawyer and jurist in the Philippines, the Louisiana reports, which run up to over 150 volumes, is an unfailing reservoir of helpful guidance and juridical wisdom.