

SOME LEGAL EFFECTS OF CHANGES OF SOVEREIGNTY OVER THE PHILIPPINES (1898 TO 1946)

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The phrase "change of sovereignty" is here employed to describe the situation where one State succeeds to the right of exclusive control within and supremacy over territory possessed by another. Succession implies that rights of sovereignty are already in existence prior to the change, and their lodgment in a State, or a political community regarded as capable of exercising them, and whose title thereto is respected.¹

Oppenheim has this to say:

"When in consequence of war or otherwise one State cedes a part of the territory to another, or when a part of the territory of a State breaks off and becomes a State and International person itself, succession takes place."²

And Fenwick:

"Succession * * * involves the substitution of a new sovereign over the territory in question and calls for the determination not of the *de jure* character of the sovereign which is a different question but of the right of the new sovereign to assert the claims of the former sovereign in respect to the particular area of the territory and duty to meet its obligation.

"Succession is said to be partial when an existing State takes over whether by forced or voluntary cession, the sovereignty of a portion of territory formerly belonging to another State; or again, when a new State is formed by breaking off from a larger State, as the U. S. did in 1776; or when a State previously a member of a Federal State or of a confederation, or previously a protectorate of another State, obtains its complete independence."³

Spain acquired title to the Philippines by discovery and occupation which, during the early times, were the most common forms of acquiring territory.⁴ From the time Ferdinand Magellan set foot

¹ 1 Hyde 394-395.

² 1 Oppenheim 160.

³ Fenwick, International Law, second edition, 123.

⁴ Randolph, Law and Policy of Annexation, 18.

on Philippine soil in 1521, and subsequent thereto, there was evident a definite endeavor to acquire the Territory in behalf of the King of Spain and "so to bring into being something akin to a right of sovereignty over an area that at the moment of acquisition belonged to nobody."

Desiring to acquire dominions * * * the potentates of the old world in order to avoid conflicting settlements and consequent war with each other, established a principle (discovery) which all should acknowledge.⁵ The principle was that discovery gave title to the government by whose subjects, or by whose authority it was made, against all other European governments, which title might be consummated by possession.⁶ The Philippine Islands therefore became a part of the Kingdom of Spain and remained so up to 1898, when by a process, recognized by the law of nations as cession, her existing rights of sovereignty over the Philippines were transferred to another State, the United States of America. The terms of transfer were embodied in an agreement, the Treaty of Peace of December 10, 1898, commonly known as the Treaty of Paris of 1898.⁷ There was manifest an act of surrender by a grantor to a designated grantee.⁸ By this cession also America recognized the actual as well as the theoretical lodgment of rights of property and control in Spain who was called upon to divest herself thereof.⁹

America therefore succeeded Spain in the control and sovereignty of the Philippines. What was the nature of this succession?

One thing clearly stood—the Philippines was a part and not the whole of the State that was Spain. America therefore succeeded Spain only over a certain portion of her territory. The succession was partial,¹⁰ because an existing State took over, whether by forced or voluntary cession, the sovereignty of a portion of territory formerly belonging to another State.¹¹

Ross discusses universal and partial succession in terms of situations. The situations relevant to the discussion are: (with A as the ceding State, B the acquiring State, and X being the subject of the cession).

1. X constituted part of A's territory or X constituted the whole of A's territory;
2. A still existed after the succession;
A ceased to exist after the succession;
3. B existed before the succession;
B did not exist before the succession.

⁵ Johnson v. McIntosh, 8 Wheaton 543.

⁶ *Idem*.

⁷ Spain ceded the Philippines to the United States in 1898 and the United States paid \$20 million (Wilson, International Law, 73). Fenwick considers the transfer as cession. Hackworth and Hyde, however, discuss the subject under "Change of Sovereignty."

⁸ Hyde, International Law, Vol. 1, p. 358.

⁹ Hyde, International Law, Vol. 1, pp. 359-394.

¹⁰ See Garcia: Questions & Problems in International Law, p. 87.

¹¹ Fenwick, International Law, 123.

On the assumption, that Spain had sovereignty and could therefore cede the Philippines to the United States, and following Ross' theory that the Philippines constituted part of Spain's territory, that Spain still existed after the cession and that the United States existed before the succession, it may be said that there was partial succession.

All the foregoing discussions are based on the assumption that Spain was sovereign at the time of the signing of the Treaty of Paris. All the American writers above-cited agree that Spain was sovereign, and that the succession was therefore partial. This may be the reason why other political science writers have referred to the Philippine-American War as a mere insurrection.

But it must be remembered that at the time, the "Malolos" Republic had been established and its Constitution proclaimed. From the standpoint of International law, the Filipino government was of the class known as *de facto* government.¹² The short-lived government established by the Filipinos during the Spanish-American war was recognized as *de facto* government by the United States in *McCleod v. U. S.*¹³ If this view were adopted, then the title of the United States to the Philippines may be considered to have been acquired by force of arms, conquest.

However, in view of the fact that most International Law writers consider the title of the United States to the Philippines as having been acquired under and by virtue of the Treaty of Paris, and considering the fact that the description of Article I in the Constitution of the Republic of the Philippines of the territory thereof, follows the description of the Philippines ceded by Spain by such treaty, and implies a recognition of the United States title by virtue of that treaty, and considering further that Article VII of the Treaty of General Relations between the Republic of the Philippines and the United States of America, concluded on July 4, 1946 expressly provides that "the Republic of the Philippines agrees to assume all continuing obligations assumed by the United States of America under the Treaty of Paris on the 10th day of December, 1898, by which the Philippine Islands were ceded to the United States of America * * *" we shall not discuss the effects of succession, if any, from the "Malolos" Republic. The discussion will be limited to the problems of succession from Spain to the United States under the Treaty of Paris.

What were the legal effects of that succession? Hyde classifies the effects of succession into: (1) Effect on Legislative and Political Power; (2) Effect on Law; (3) Effect on Public Debts, subdivided into general debts and local debts; (4) Effect on Contracts and Concessions; (5) Effect on Private Rights (6) Consequences of Internationally Illegal Conduct of former Sovereign. Using this classification as a guide, we attempt to discuss the more important effects of the succession by America of Spain in the Philippines.

¹² Malcolm and Laurel, Philippine Constitutional Law, 51.

¹³ 229 U. S. 416.

As to the first kind of effect, the moment American succession became a *fait accompli*, legislative and political powers over the Philippines were vested in the United States of America. Spain could not perform any valid act in the Philippine Islands in defiance of the supremacy of the transferee. Spain could no longer, for instance, alienate public lands, or grant public franchises.¹⁴ In the language of Justice Howry of the U. S. Court of Claims, "it needs no reference to international law to say that any exercise of authority by the ceding sovereignty, *after* cession, could not have force with reference to such things as grants of land or the bestowal of special franchises, such as the construction of roads, the keeping of ferries, and the erection of bridges with the right to collect toll upon them."¹⁵

Of course, nothing could preclude the parties from agreeing as to whatever effect was to be given any act of the former sovereign prior to the transfer, following the change of sovereignty. For instance, the Treaty of Paris expressly provided that:

(1) Judgments rendered either in civil suits between private individuals or in criminal matters, before the date mentioned (exchange of ratification), and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried into.

(2) Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending or in the court that may be substituted therefor.

(3) Criminal action pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but such judgment, having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose.¹⁶

Also, "and it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."¹⁷ It would be well to observe that these prop-

¹⁴ Hyde, Vol. 1, p. 396.

¹⁵ Philippine Sugar Estates Development Co. v. United States, 39 Ct. Cl. 225, 247.

¹⁶ Art. XII, Treaty of Paris of 1898.

¹⁷ Art. VIII, 2d par. Treaty of Paris of 1898.

erties or rights referred to were granted by Spain or acquired thru modes recognized by Spain.¹⁸

As to the second class of effect, it will be observed that our own Supreme Court had ruled, in effect, that political laws of the old sovereign (Spain) were deemed abrogated but municipal laws continued in full force and effect, insofar as they were compatible with the new order of things. Said the court:

"It is a general principle of the public law that on acquisition of territory the previous political relations of the ceded region are totally abrogated. 'Political' is here used to denote the laws regulating the relations sustained by the inhabitants to the sovereign."¹⁹

And the United States Supreme Court had voiced the same opinion, expressive of the rule recognized in the United States:

"Every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of their own government, and not according to those of the government ceding it."²⁰

These views do not conflict with the International law rule on the subject. Prof. Hyde quoting from Joseph H. Beale's *Cases on Conflict of Laws*, III, Summary, sec. 9, states that while American tribunals have recognized that law once established continues until changed by some competent legislative power, that is not changed merely by change of sovereignty, admits that public laws of the former sovereignty form an exception to this rule and are directly affected by the transfer. Prof. Hyde says:

"It is doubtless true that such laws as are at variance with the constitution and laws of the new sovereign cease to operate, but the reason for such cessation is not to be ascribed to the bare change of sovereignty. It is attributable rather to conditions which are in themselves consequences of that change. The very disappearance of the former sovereign, with its distinctive and possible arbitrary form of government leaves no room for the operation of laws designed to uphold it and contemplating its existence."²¹

That there is a total abrogation of the former political relations of the inhabitants of the ceded region is obvious. But it is equally

¹⁸ In the early period, grants were made under and pursuant to numerous cédulas, decretos, resoluciones, ordenamientos, reglamentos, etc. Then came the Laws of the Indies, followed later by a series of decrees, among which are the Royal Decrees of June 25, 1880, of June 22, 1882, Jan. 19, 1883, Feb. 13, 1894. The Spanish Mortgage Law also provided for a mode of giving away a public land into private ownership.

¹⁹ *People v. Perfecto*, 43 Phil. 887.

²⁰ *Pollard v. Hagan* (1845), 3 How. 210.

²¹ Hyde, Vol. 1, p. 398-399.

settled in the same public law that the great body of municipal laws which regulates private and domestic rights continue in force until abrogated or changed by the new ruler.²²

In the matter of municipal laws, it is true that on the occupation of the Philippines, by instructions of the President to the Military Commander on May 28, 1898, and by proclamation of the latter, the municipal laws of the conquered territory affecting private rights of person and property and providing for the punishment of crime were normally continued in force insofar as they were compatible with the new order of things.²³ It is believed, however, that this proclamation was merely a reiteration of the international law principle that laws protecting the private rights of the inhabitants of the territory concerned are not changed merely by change of sovereignty.

The effect on private debts appears to be more complicated. The extent to which the United States of America succeeded Spain in her public debts, specially the so-called "general debts," is not altogether clear. And this situation is not exceptional. Prof. Hyde admits that divergent practices have been reflected in treaties of cession. And this divergence has been due to the fact that some nations do not consider it a legal duty to assume a measure of the burden of its predecessor; and others, while considering the assumption as moral obligation, admit that the obligation can always be disregarded.²⁴

As to the general debts of Spain, it appears logical that the United States of America should not be burdened with such debts because being debts of Spain and the latter not having ceased to exist, she should bear her own aberrations. Prof. Hyde admits that this practice has been uncontradicted in the past by any other authoritative practice. The principle would seem to be even peculiarly fit in reference to the Philippines because to quote Prof. Hyde, "in the case of a change of sovereignty over the territory of a distant colony or island constituting a relatively unimportant part of the domain of the parent State, or of which the fiscal system was an entity distinct from that of such state, it might be reasonable to deny that any part of the general indebtedness of the old sovereign should pass to the new."²⁵

Prof. Hyde, however, believes that, and relatively recent treaties²⁶ have shown, that the new sovereign, in the interest of justice, should be made to bear a part of the general indebtedness, provided benefits, derived from such indebtedness, have accrued to the territory transferred, but that such benefits should not necessarily be deemed to be non-existent when the debt is general rather than local. There appears, however, to be no legal obligation on the part of the seceding province or on the part of a country to assume some share

²² *Villas v. City of Manila*, 220 U. S. 345.

²³ See *People v. Perfecto*, *supra*.

²⁴ Hyde, Vol. 1, p. 400.

²⁵ Hyde, Vol. 1, p. 404.

²⁶ For example, the treaty of peace with Germany of June 28, 1919.

of the national debt when the identity of the parent State is maintained.²⁷ They recognize, however, a moral obligation to assume a proportionate share of the general debt of the parent government which has been incurred for the benefit of the entire country.²⁸

Applied to the case of American succession to Spain in the Philippines, this opinion would have been difficult of implementation. Question might have arisen as to who should have the burden of proof of the benefits; as to whether the debt is general or local; as to the extent of benefits; as to the apportionment itself.

Obligations which are impressed upon the territory transferred in such a way as to be specially associated with it, and as manifesting at least no unbeneficial connection therewith pass to the new sovereign.²⁹ When a debt is incurred and permanent improvements are made in the transferred territory as a consequence thereof, the debt is unquestionably local and the new sovereign should assume it. Thus in the case of *Villas v. City of Manila*, *supra*, the city of Manila assumed the municipal debts on the ground that the juristic identity of the corporation had in no wise been effected and in law the present city was in every legal sense, the successor of the old.³⁰ The court further declared that there was no reason for supposing that the reincorporation of the old municipality was intended to permit an escape from the obligations of the old, to whose property and rights it had succeeded.

The successor state is liable for local debts, that is to say, debts contracted within the financial autonomy of a ceded part of a State or which have been incurred by the general administration but exclusively in the interest of a ceded part of the State.³¹ The place and the purpose of the expenditure would appear decisive in determining a local debt.³² But when the resources of the territory ceded should have been previously pledged by the then sovereign to guarantee a debt which was never applied for the benefit of the territory or which might have been employed against the inhabitants of the territory, the debt is not a local debt. The new sovereign does not incur the obligation. It is a debt contracted by the former sovereign for "national purposes." Stated differently, it is a personal debt of the ceding State.

Spain, therefore, under this theory, could not claim that the United States should assume her obligation for debts incurred in prosecuting the war against America, or in suppressing the Philippine revolution. She could not claim the same from America with respect to debts which were never employed within the Philippines, even if the resources of the latter stood as guarantee for the payment thereof.³³

²⁷ Borchart, *Diplomatic Protection of Citizens Abroad*, 202-205; 1 Hackworth, 540-541.

²⁸ 1 Hackworth, 540-541.

²⁹ Hyde, Vol. 1, p. 409.

³⁰ 220 U. S. 360-361.

³¹ Ross, a textbook on International Law, 130.

³² See Hyde, Vol. 1, p. 410.

³³ Read discussion in Hyde, Vol. 1, pp. 410-414.

For a general rule as to the effect of state succession on contracts and concessions granted by the former sovereign we may assert that a change of sovereignty does not *necessarily* terminate a contract concluded or a concession granted. This, however, carries with it the implication that the new sovereign in the same way that it may choose to derive benefits from the contract may also elect to cancel or modify said contracts or concessions, or simply refuse to recognize them. This, however, does not mean that a succeeding state may freely and arbitrarily disown contracts entered by its predecessors. Prof. Hyde speaks of the "equities" of the case which have to be considered; whether the contract was made on the assumption that it would terminate upon a change of sovereignty or would subsist. The latter of course would depend on whether the contracting State could bind its successor to the sovereignty, and that solution might in the particular case be expected to depend in turn upon the character of the concession and upon the circumstance whether it could reasonably be regarded by the transferee as detrimental to the area concerned.³⁴ Under this view, however, it is ultimately the transferee again upon whom depends the continuance of the contract or concession. For a contract, even if favorable to the former sovereign's point of view, may be classified as detrimental to the territory concerned, by the transferee. A contract or concession may be deemed adverse to the territory transferred because of the purposes of the undertaking, or by reason of the terms of the agreement, or on account of the method by which performance is contemplated.³⁵

And it is not even necessary that a contract or concession be adverse to the territory ceded, for a transferee to cancel or refuse to recognize the contract. If the latter is a personal contract of the grantor, the grantee does not succeed the latter. In the case of the Eastern Extension Australian and Chinese Telephone Co. v. U. S.,³⁶ the court of claims considered a contract entered into between Spain and a British Corporation for the construction and operation at the latter's expense of submarine cables and telegraph land lines communicating Luzon with certain other places and for which the Spanish Government agreed to pay the Corporation a subsidy, a personal obligation or debt of the Spanish government to a private corporation and for which the United States could not be held liable. The Court in part said:

"When the United States succeeded to the sovereignty of Spain over these islands, they were under no more obligation to continue the contracts for public or private service of the individuals or corporations then they were to continue in office officials appointed by the Spanish Government.³⁷ The obligation of Spain to the claimant was not

³⁴ Hyde, Vol. 1, p. 425.

³⁵ Hyde, Vol. 1, p. 429.

³⁶ 48 Ct. Cl. 33.

³⁷ Prof. Hyde however considers this portion of the decision as a *dictum*, basing his conclusion on the opinion of Mr. Justice Hughes that, under the relevant Act of Congress, Act of March 3, 1887, the Court of Claims did not have jurisdiction to adjudicate on the question of effect of change of sovereignty produced by the treaty of cession.

the obligation of the Philippine Archipelago, though the Philippine government saw fit to pay subsidy out of revenues of the Islands; but if we were to assume that it was, the United States, in the absence of treaty stipulation would not be liable therefor."

The effect on private rights is with reason thought of as effect on property rights. Does succession work a transfer of these rights?

Chief Justice Marshall answered thus:

"A concession of territory is never understood to be a cession of the property belonging to its inhabitants. The King cedes that only which belonged to him; lands he had previously granted, were not his to cede. * * * The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property."³⁸

The Permanent Court of International Justice also had occasion to state that "it suffices for the purposes of the present opinion to say that even those who contest the existence in international law of a general principle of State succession do not go so far as to maintain that private rights including those acquired from the State as the owner of the property are involved as against a successor in sovereignty."³⁹

The Treaty of Paris is a re-affirmation of the above rule for Art. VIII, par. 2 expressly provide:

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."

The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris and its property rights solemnly safeguarded. In so doing, the treaty has merely followed the recognized rule of International Law which would have protected the property of the Church in Puerto Rico subsequent to the cession.⁴⁰

Commercial contracts of Spain with third persons as to the Philippines were not extended to be valid between the United States

³⁸ U. S. v. Perchman, 7 Pet. 51.

³⁹ Hyde, Vol. 1, p. 433.

⁴⁰ Municipality of Ponce v. Roman Catholic Church, 210 U. S. 296, 323, 324.

and such third power. But contracts of the United States with third persons extended to the Philippines.⁴¹

As to servitudes, Ross repudiates the traditional view that servitudes, being a *jus in rem*, the obligation must be respected by the successor state. According to Ross, only if the third power actually exercises the power on the territory might it be considered as binding on the successor. However, he qualifies this statement with an exception. Thus when the treaty obligation arise by virtue of a collective theory, and later, one of the contracting parties acquires the territory concerned, the acquiring party must respect the servitude.⁴²

On the granting of independence to the Philippines on July 4, 1946 there was again partial succession. Partial succession takes place when a hitherto not fully sovereign state becomes fully sovereign.⁴³

Adopting Alf Ross' test we find:

1. That the Philippines formed part of the territory of the United States;
2. That the United States existed and exists before and after the cession;
3. That the Republic of the Philippines did not exist before the cession.

The general discussion, therefore, above cited, would hold true in the transfer of sovereignty from the United States to the Philippine Republic.

However, the effects of succession on the rights and obligations of each State have been agreed upon in a Treaty of General Relations entered into between the Philippines and the United States on July 4, 1946.

Debts:

The Republic of the Philippines agreed, under the Treaty, to assume all the debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities which were valid and subsisting on July 4, 1946. The Republic also agreed to make adequate provisions for the necessary funds for the payment of interest on and principal of bonds issued prior to May 1, 1934 under authority of an Act of Congress by the Philippines, or any province, city or municipality therein, and that such obligations would constitute a first lien on the taxes collected in the Philippines.⁴⁴ Continuing obligations assumed by the United States in the Treaty of Paris, and in the Treaty between the United States and Spain at Washington on November 7, 1900 were likewise assumed by the Republic of the Philippines.⁴⁵

⁴¹ Ross, Textbook of International Law, p. 127.

⁴² *Idem*.

⁴³ 1 Oppenheim 152.

⁴⁴ Art. IV, Treaty of General Relations.

⁴⁵ Art. VII, Treaty of General Relations.

Suits:

It was also agreed that all cases at law concerning the Government and people of the Philippines, "in accordance with Section 7(6) of the Independence Act of 1934, are pending before the United States Supreme Court at the date of the granting of independence shall continue to be subject to the review of the Supreme Court of the United States for such period of time after independence as may be necessary to effectuate the disposition of the cases at hand."⁴⁶

In passing, it may be stated that the above provision was necessary because by the grant of Philippine Independence the Supreme Court of the United States would have lost jurisdiction to hear and determine cases of such a nature.

We believe that the Commonwealth Government was not a sovereign state, at least for purposes of state succession. This statement finds support in the express provisions of the Treaty of General Relations between the Republic of the Philippines and the United States of America. Under article 1, it is still the United States that "agrees to withdraw and surrender and does hereby withdraw and surrender all right of possession, supervision, jurisdiction, control or sovereignty existing and exercised by the United States of America, in and over the territory and the people of the Philippine Islands * * *" Under Article IV, "the Republic of the Philippines agrees to assume and does hereby assume all the debts and liabilities of the Philippine Islands, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting on the date hereof * * *" This is a clear recognition that these debts and liabilities, while contracted by the Philippine Islands, were ultimately the responsibility of the United States of America, and under the Treaty, the Republic of the Philippines agreed to assume the same. Under Article VII, the "Republic of the Philippines agrees to assume all continuing obligations assumed by the United States of America under the Treaty of Paris between the United States of America and Spain * * *" a provision that indicates that the Republic of the Philippines was succeeding the United States of America and not the Commonwealth.

It is also interesting to note that in a telegram sent by Secretary Hull to Ambassador Johnson during the Commonwealth it was stated that "the Philippines is not an independent state and the President is not entitled to the honors usually accorded to a Chief of State. Sovereignty over the Philippines remains with the United States of America and the only official of the United States of America entitled to such honors is the President of the United States of America."⁴⁷

⁴⁶ Art. V, Treaty of General Relations.

⁴⁷ Hackworth, Vol. 1, p. 498.