

BOOK REVIEWS

AMERICAN COLONIAL CAREERIST, by George A. Malcolm, The Christopher Publishing House, Boston, U.S.A., 1957. Ancillary Authorities. Index. Pp. 288. P13.50

Cynics love to point out how history is written by a wise man who wasn't there. This cannot be said of Justice George A. Malcolm's book, *AMERICAN COLONIAL CAREERIST*, which covers the period from 1900 to 1935, a significant epoch in Philippine history. The era now belongs to another age in time as well as in mood. Most of the principal actors have retired from the scene, Justice Malcolm not excepted. But the process of rescuing the events of that period from the journalist and the historian to make it an engaging book is the task of the author in this book.

"In unfolding *AMERICAN COLONIAL CAREERIST*, my prayer is that 'geniality' will not desert any of us—the critics whose words inspired the effort, the author who solemnly promises to make this book his valedictory, and the readers who turn the pages of this book."

In these words the author prefaces the book. Given this apology addressed to critics as the preface, one could hardly guess at the fascination of his book. It is a historical account which verges on autobiography, or vice-versa, and while it is no exhaustive and comprehensive chronicle of events, it is an honest record of Philippine affairs during the author's long stay in the Philippines, and that of Puerto Rico in his brief sojourn there. It is interspersed with interesting anecdotes and sidelights on the American officials and Filipino leaders as he had known them. His intimacy with those personages makes for the vivid portraiture of these personalities, and presents them to the reader with objectivity and subtle humor.

On August 15, 1905, Justice Malcolm, then a graduate of law in the University of Michigan, boarded the army transport, *Logan*, to begin his career as a colonial officer and heed what he calls "the all-consuming desire to seek out new lands which must be inborn in the Malcolm family." He ended up in Manila with three dollars in his pocket, and thus started his struggle to realize his ambition and his life in the Philippines which was "a pleasant, a fascinating, and a never-to-be-forgotten experience."

Justice Malcolm stayed in the Philippines for about three decades, from 1906-1936, handling various positions in the government. A letter of introduction addressed to the then Executive Secretary Frank W. Carpenter saved him from unemployment and possible starvation, and opened up his career in the Philippine government. He began as a temporary voucher clerk in the Bureau of Health, with a monthly salary of seventy-five pesos a month. From then on, he held odd jobs—civil service clerk in the Executive Bureau, clerk in the Reporter's office of the Supreme Court, secretary of the Code Committee, teacher in the Philippine Normal School, law clerk, First Assistant Attorney General in the Bureau of Justice, professor of public law in the College of Law, University of the Philippines, where he became the first Dean, during which time he wrote law books and treatises. Finally, he capped his career with a promotion to the Supreme Court.

Justice Malcolm's life, as can be seen from his record, was one of continuous service to his adopted country. No other foreign official ever equalled his record of service in the Philippines. But more than a life of service, the author's life was one constant dedication to a principle—the principle of self-help and self-determination among the Filipinos as they were guided in their endeavor to learn the essentials of democratic government and political leadership. That was why he took a courageous stand against colonialism, which stand drew hostile reactions from some of his countrymen. Looking back at his epic struggle, he writes: "At the heyday of Imperialism when European powers rule colonies covering half the globe, I was to see my country initiate a system of ever-increasing self-government for the Philippines. Thereafter, the opportunity was to be afforded me to take a stand in favor of resolute adherence to America's revolutionary anti-colonial policy. For thus conducting myself, I was to come near to dismissal from the government service, only to be vindicated by promotion to the Supreme Court. When years later I left the Far East, the end of Colonialism was discernible."

The author was also instrumental in the establishment of the College of Law of the University of the Philippines. He persisted in creating it until the Board of Regents gave in, for he saw the necessity of training future leaders to guide the country in its period of transition. He says:

"A principal purpose of the College of Law was the training of leaders for the country. The students were not alone tutored in abstract law dogmas; they were inculcated with the principles of democracy. All were made to work hard, and they developed a real sense of responsibility. The Spanish-trained and older men—Aguinaldo, Tavera, Sumulong, Palma, Quezon and Osmeña—in time would depart the scene. Ready to succeed them would be capable leaders. The College of Law would have fulfilled its mission."

Time has proved Justice Malcolm right; what he did really affected the future history of the Philippines. Today, Filipinos who know the labors of Justice Malcolm love him as one of their heroes, and call him "one of the great architects of democracy in the Philippines."

When the author was made an honorary citizen of the Philippines in 1955 by an act of Congress, Senator Vicente Francisco called him the "symbol of progressive thought", an appellation which is not undeserved. His friendly critics like to think that he started as a radical, evolved into a mature liberal, and settled down to conservatism in old age.

He was named to the Supreme Court at the early age of thirty-five in 1917, where he had the opportunity to apply his learning and his principles in the disposition of conflicting needs and demands. For instance, in *People v. Perez*, (45 Phil. 599), he laid down what is known as the "dangerous tendency" rule as a test when acts or utterances are seditious and thus punishable despite claims to freedom of expression. Malcolm proved himself incorruptible, and he cites the case of *People v. Cu Unjieng* (61 Phil. 236), when he had to postpone his retirement from the Supreme Court for two months because of a pending case against the wealthiest Chinese in the country at that time. "It was my opinion that the accused was guilty as found, that the recanting testimony was intended to poison the wells of truth, and that there should be a single standard for the rich and the poor," he declares.

Justice Malcolm fought for the independence of the judiciary, and he penned the decisions in the leading cases of *Borromeo v. Mariano* (41 Phil. 322) and *Concepcion v. Paredes* (42 Phil. 599). Recalling his battle to maintain judicial autonomy, he says, "It affords me deep satisfaction to recall that I helped provide the background for the constitutional provision prohibiting the designation or transfer of a judge without the approval of the Supreme Court."

The author also proved himself to be a votary of our basic freedoms, and in the case of *U.S. v. Bustos* (37 Phil. 731), he drew the line between privileged communication and libel. In an opinion which now remains a classic in Philippine jurisprudence, he said:

"The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Rising superior to any official or set of officials, the Chief Executive, to the Legislature to the Judiciary, to any or all agencies of Government—public opinion should be the constant source of liberty and democracy. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official."

His stay in the Supreme Court blazed a path of progressive thought lighted by profound erudition, and today his decisions still stand out in public and private law.

Justice Malcolm was also a personal friend of the Filipinos. He had his home in Manila, made occasional trips to the provinces, mingled socially with the people, and accepted them as his brethren. He was even familiar with the peculiar Muslim customs, and this at one time served him in good stead while he was on the supreme bench. Recalling the case of *Adong v. Cheong Seng Gee* (43 Phil. 43), he writes:

"My acquaintance with Moro customs came in handy in one historic case. The trial judge had held that a marriage performed according to the rites of the Moslem religion was not lawful. No less than 150,000 Moro couples had entered wedding in this form. The press captioned the news, 'Moros begin polishing their crises.' By the use of a modicum of common sense, I experienced no difficulty in reversing the judgment of a literal-minded magistrate. Trouble with a people who resent any intrusion in their religious practices and any slur on their faith was averted."

"It was no effort for me to maintain friendly relations with the people. All one had to do was to act naturally and become part of the community, and differences of race and customs were quickly forgotten."

Summing up, the author succeeds in weaving a complex narrative in a half-serious, half-facetious tone, with moments of vividness as in the recollection of interesting anecdotes. He combines his work with analytical chapters on the faults of Filipinos and Puerto Ricans, although he is cautious not to step on their toes.

The work is characterized by that "inner dynamic" attributable to the fact that it was written in the depth of Philippine life and society by "a man who was there." This makes the book unconsciously self-revealing, with the narrative in the first person most of the time. This even the author realizes, and offers his apology in the preface. For the main, it is written with concision and clarity with an eye for vivid detail, which makes it both valuable and interesting as a reading matter.

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THE LAW ON AGRICULTURAL TENANCY IN THE PHILIPPINES, by Guillermo S. Santos.
Central Book Supply, Manila. 1957. pp. xx—320.

It is perhaps the distinction of the agricultural tenant in the Philippines to have been ensconced in a position that is eyed enviously only by—his work animals. Like Edwin Markham's "Man with the Hoe", his affinity to the ox (or the carabao, as its local counterpart) had always been too defined to be overlooked. If for this alone, the Government felt itself justified to encompass him in its program for the underdog, to extend to him, so to speak, the blessings of an enlightened "social justice". And, this, moreover, carried with it the recognition of the implications of agrarian trouble along with the great effort at the moment to stave off national economic collapse.

To this end, therefore, Congress enacted several agricultural tenancy measures prominently capped by the Agricultural Tenancy Act of the Philippines of 1954 (Republic Act No. 1199) which now constitutes the basic law governing tenant-landholder relations. The book under review is a thorough and methodical exegesis of this law and allied legislation. As such, it is a painstaking delineation of the nature and consequences of the tenancy relationship: the rights and obligations of the landholder and of the tenant under both systems of tenancy (share and leasehold), the causes for termination of the relationship, grounds for dispossession of the tenant, etc. The book further devotes its second part to a discussion of the nature, powers, procedure and role of the Court of Agrarian Relations and the Agricultural Tenancy Commission.

Confirmation is made by the author of the richness and the ripeness of agricultural tenancy for legislation as it directs our attention to the ticklish relations and the fundamental State responsibilities involved. The book, in the same breath, manifests the sharp need for judicial guidance through decisional interpretations of the tenancy laws. The indication is plain that the decisional trend of the Court of Agrarian Relations and the Supreme Court so far is towards the upholding of the spirit of the Act over its bare literal provisions, which tendency is aptly exemplified by the recognition of the "bayani" or "suyuan" system in spite of specific provisions of the Act (Section 5(a), Section 23, par. (1) and Section 24) which require the tenant's personal cultivation of the tenanted land. The book, further, confronts us with a blatant judicial partiality in the tenant's favor—a partiality that is distinctly countenanced by the Act itself as well as a merited concession to the tenant in view of his inherently and proverbially weak bargaining position and traditional penury.

Judge Santos' book in convincing in its honesty, especially as it accepts that Philippine agriculture has not progressed too far from its primitive state and that farm mechanization, while slowly gaining ground, is still largely an ideal. But what the author-Judge should have stressed, something which he must have felt to have been beyond the proper coverage of a technical book on the subject, is that the Philippine landholder is really the more primitive as he classes tenaciously his feudal prerogatives. We note, however, a half-hearted admission from the author to this effect inasmuch as he views the Agricultural Tenancy Act as resigned to put the tenant at about par with the landholder with the end-in-view that neither oppress the other.

The author's treatment demonstrates unmistakably a supreme command of the subject matter and an utter competence to discuss it. Yet the observation is nevertheless necessary to express that the whole book leans too lightly upon the critical side while at the same time it is noticeably heavy on the informative side; and the manner of presentation of the cases and decisions leave much room for improvement in the sense of a more patient synthesis.

But Judge Santos is to be loudly commended for having bravely come out as the *avant-garde* in a scholarship in this new field of Philippine law. The book is a most challenging effort, and is therefore very warmly welcome.

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STATUS OF FORCES AGREEMENT: CRIMINAL JURISDICTION. By Joseph M. Snee, S.J., and A. Kenneth Pye. Oceana Publications, Inc., New York, U.S.A. Copyright, 1957.

Library of Congress Catalog Card Number: 57-12991. Pp. 167.

In the preservation of world peace and in the fulfillment of its defense obligations with the nations of the free world aligned against the Soviet menace, the United States has based its armed forces on foreign countries. This has been made possible, in view of the territorial sovereignty of the receiving State involved, by status of forces agreement. As treated in the book under review, the Status of Forces Agreement is discussed in the multilateral treaty concluded by the original twelve (12) nations of the North Atlantic Treaty Organization.

"Status of Forces Agreement: Criminal Jurisdiction" is a study, arranged in commentary form, of the problems of criminal jurisdiction arising under Article VII of the Agreement. It is to some extent similar, if reference may be made, to the criminal jurisdiction provision contained in the PI-US Military Bases Agreement.

The authors, who have undertaken the study at the request of the American Law Institute, discuss the legal problems, many of them as knotty as the Gordian Knot, arising under the provisions of that Article with particular reference to applicable American constitutional and military law, and set forth the practical solutions arrived at by the cooperation of American and foreign officials. Of particular attention to the Philippines because of the aftermath of the *Roe* case are the difficulties also met in criminal cases arising in the performance of official duties by US-servicemen and how such ticklish problems have been solved to the satisfaction of both sending and receiving states.

To legal theorists and disciples of jurisprudence, this book brings forth a new field of interesting study in *Conjurisdictional Law* as named by Prof. Julius Stone of the University of Sydney. This novel body of law has been engendered by the radically different systems of law of two sovereign nations operating within the same territory and in respect to the same individuals. It has been further characterized as cutting "across many of the traditional branches of legal science."

In view of the serious fact that the re-negotiations between U.S. and P.I. authorities on the up-dating of the Military Bases Agreement have been stalemated because of radical disagreement on the question of criminal jurisdiction, and of the recent statement** of Justice Secretary J. G. Barrera suggesting the adoption of some of the salient features of the NATO Status of Forces Agreement to break the impasse, the reading of this book may prove to be enlightening, if not timely.

EMERITO TOLENTINO

* See Comments by Mr. Pablo B. Badong. Philippine Jurisdiction Over the George E. Roe Case, XXXII Phil. L. J. 3, pp. 403-410, July, 1957.

** Refer to Manila Times, July 15, 1958.

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THE SUPREME COURT SPEAKS by Jerre S. Williams. University of Texas Press 1957. Pp. 465. Foreword, Epilogue, appendices, index P15.45. Distributed by the Philippine Education Co.

The United States Supreme Court, in a brief span of over two centuries, has maintained a tradition of the highest order in its role as the final arbiter of the rights and liberties of the American people. From John Jay, its first Chief Justice, to Marshall and down the ranks of its illustrious members, it has withstood pressure from within and without to keep faith with its bounden duty of upholding the majesty of the law and at the same time render equal justice to all. Each decision calls into play the finest wit and legal lore and when rendered, leaves behind a drama which is at once significant and interesting for its vital and far-reaching effects on the lives and destinies of a people and nation.

For years it has disturbed the author, a profesor in his own right, why these important decisions are nowhere available in a nutshell both to members of the bench and bar and to the layman. To fill this lack and at the same time present a panoramic view of the role the Supreme Court has played in the protection of the rights of individuals, he came up with the SUPREME COURT SPEAKS and in no other book has it been so beautifully portrayed.

Designed for the use not only of lawyers, professors and students but for the consumption of the laity as well, the book opens with an introductory word to familiarize the uninitiated with the judicial process, thus setting the stage for what unfolds in the succeeding pages.

For a better understanding of the decisions, the author has seen fit to preface each with a comment on the circumstances that led to its making and to break an otherwise too objective a presentation, has injected a brief sketch of the life of the justices for a personal touch.

The book is divided into six parts, each containing texts of decisions handed down by the Court under separate chief justices beginning with Marshall in his precedent-setting rule on *Marbury vs. Madison*.*

For the Filipino student who wishes to brush up on the familiar Marshall rhetorics and the famous dissents of Holmes and Brandeis, the book is worthwhile having for a ready reference.

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LAWYER'S GUIDE TO ACCOUNTING. By Harry S. Finney and Richard S. Oldberg, Prentice-Hall Inc., New Jersey, 1955, pp. 291, Index. P15.50

The authors, a Certified Public Accountant and an Attorney-at-Law, gave a bird's eye view of their work in these words: "This is a book for lawyers. But it is not a 'law book'. It cites no cases, makes very few references to statutes, and does not teach lawyers any law; nor is it meant to make accountants of them."

In this book, eighteen accounting topics have been made understandable to the lawyer in simple, non-technical language. These subjects range from a consideration of the mechanics of bookkeeping to a discussion of the so-called "generally accepted accounting principles." The text is profused with easy-to-grasp examples illustrating how various accounting procedures are applied in actual business practice.

The introductory part of the book presents an apparently simple contract of loan between X Corporation and the First National Bank, wherein the former received from the latter a sum of money to be repaid later in installments. The complication, if it could be considered that, rested in the requirement of the loan agreement that X Corporation keep its accounts in conformity with the generally accepted principles of accounting and on a consistent basis; otherwise, the Bank would accelerate the maturity of the loan. This contract stipulation gave rise to twenty different questions for the solution of which, the client turns to the legal counsel, and sometimes to the accountant. However, it is often difficult to determine what is strictly a legal matter and what is plainly accounting. Because of these "mixed" questions in everyday life, the accountant and the business lawyer should each know at least the rudiments of the other's profession.

The order of the topics in this book follows that commonly found in textbooks designed for first year courses in accounting. The bookkeeping procedures are discussed in the first chapters because the authors believe that it is impossible for anyone to have a thorough understanding of the principles of accounting and an ability to interpret accounting data without some knowledge of the mechanics. Chapters 4 and 5 are devoted to a detailed description of the books of original entry, like the cash books, purchase and sales book and multi-columnar special journals. For one thing, it is a general rule in the trial of law suits that accounting records, to be admissible as evidence, should be the books in which the original entries were made.

The two basic accounting statements, namely the balance sheet and the profit and loss statements, are documents familiar to the lawyer. But these summaries of financial and operating data of a business must be interpreted to be meaningful. The lawyer who looks over his client's income tax returns knows that an understatement of inventory at the end of the period results in an understatement of net income and vice versa. The problems of consignments, installment sales, profit on uncompleted contracts as well as their respective presentation in the balance sheet and the profit and loss statement are treated in detail in Chapter 9 of the book.

The tax effects of different presentations of items in accounting statements must be understood by the lawyer because it should be recognized that the tax treatment of a given transaction or situation may not be in conformity with the accepted accounting treatment. Furthermore, the balance sheet serves different purposes, and it may well be in a given case that the

statement as prepared for one user will not satisfy another. Some of the more usual uses are discussed in Chapters 21, 22 and 23 of the book to make the attorneys realize that the balance sheet prepared for a "general purpose" is possibly of little value to him when he represents his client in a specific transaction, such as in an estate tax matter or for securing a loan or an application for a franchise to operate a public utility.

While the book also includes accounting for a corporation, it discusses in a more detailed manner, the principles applicable to the two most common types of business organization in the Philippines, namely, the individual proprietorship and partnership. This knowledge will enable the lawyer to manage the financial affairs of his own office, as well as to draw and construe partnership agreements more quickly. The last chapter contains a study of the consolidated statements prepared for parent-subsidary corporations, which though rare in this jurisdiction, are also possible clients of lawyers.

As the title of the book connotes, this piece of literature is a guide to provide the lawyer with a sufficient general knowledge of accounting so that when he is confronted with a situation requiring a comprehension of some specialized branch of accounting, he can refer to the writings on the subject and to be able to understand them. The reader will find the book practical, simple and current in contents. Lawyers, in general, regard accounting as a formidable maze of figures involving complicated rules. This notion is far from true, and the authors of this book have proved in an interesting way that the essentials of accounting are easy to learn.

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