

ASPECTS OF THE ADMINISTRATION OF JUSTICE IN THE PHILIPPINES

GEORGE W. PUGH *

Eastern and Western civilizations meet and merge in the Philippines; and the two great legal systems of the West, the common law and the civil law, also meet and mix. The result is an intriguing admixture of laws and cultures. When Magellan came in 1521, the Islands had been largely peopled by successive migrations of pygmies (or negritos), Indonesians, and Malays.¹ Other cultures, however, had had their influences—Indian, Chinese, Japanese, and Arabic.² Although the existing legal system was primitive, written "codes" did exist, and copies of at least two of them have been preserved.³

During the 333 years intervening between 1565, when Spain is said to have completed her conquest of the Islands, and 1898, when the Americans came,⁴ Spanish law prevailed.⁵ The Islands thus acquired the traditions of the civil law, the system arising from Roman law and generally prevailing in the countries of continental Europe. The Spanish language became the language of the government, the courts, and the dominant economic groups.⁶

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¹ ZAIDE, PHILIPPINE POLITICAL AND CULTURAL HISTORY 21-27 (1957).

² *Id.* at 44-47.

³ *Id.* at 59-63; FRANCISCO, LEGAL HISTORY 437-442 (1951) [hereinafter cited as FRANCISCO].

⁴ The legal history of the Philippines may be divided into five periods: pre-Spanish period; period of the Spanish regime (1565-1898); period of American rule (1898-1935); commonwealth or transition period (1935-1946), including the time the Philippines was occupied by the Japanese during World War II; and the period since independence (1946-). See FRANCISCO 432; GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW 69 (1955) [hereinafter cited as GAMBOA].

⁵ For convenient summaries as to the legal system prevailing under the Spanish, see Laurel, *What Lessons May be Derived by the Philippine Islands from the Legal History of Louisiana*, 2 PHIL. L.J. 8 (Part I) and 63 (Part II), 86-88 (1915); GAMBOA 80-83; FRANCISCO 446-500.

⁶ Elementary education was largely in the hands of the church and instruction by the friars was in the various native dialects, despite a movement both from Spain and from the Filipino reform group that instruction should

With the acquisition of the country by the United States in 1898, the Philippines came under the control and administration of a country and people dominated by the traditions of the common law.⁷ After increased experience with self-government and pursuant to the Tydings-McDuffie Law,⁸ it was given commonwealth status in 1935, and independence in 1946. Despite advances, in many respects the Philippines remains an "undeveloped" country, with consequent myriad problems.

Of course, the coming of the Americans in 1898 did not carry with it an automatic substitution of law. In accordance with principles of international law, local private law generally remained in effect.⁹ The policy of the Americans was against unnecessary changes in private substantive law. In his instructions to the Taft Commission in 1900, President McKinley stated:

"The main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. Changes made should be mainly in procedure, and in the criminal laws to secure speedy and impartial trials and, at the same time, effective administration, and respect for individual rights."¹⁰

In public law and, as we shall see in greater detail, in procedural law, the substitution of sovereignties brought about early and far-reaching changes. Over a period of time, influences in other areas of the law became more or less extensive.¹¹ Although, as before, the various local language of the country continued, English gradually became the common language of government, courts, schools, and the dominant economic groups.¹² The American legal tradition was looked to as the basis for innovation.¹³ In an excellent article appearing in 1915,¹⁴ the author made a plea that the Philippines re-

be in Spanish, the latter hoping in this way to get for the people greater access to the power structure. A relatively small percentage of Filipinos had, however, gone through secondary schools and colleges and learned Spanish. TAYLOR, *THE PHILIPPINES AND THE UNITED STATES: PROBLEMS OF PARTNERSHIP* 83-84, 72-73 (1964).

⁷ From 1899 to 1902, there was a bloody conflict between Filipinos and Americans. See 2 ZAIDE, *PHILIPPINE POLITICAL AND CULTURAL HISTORY* 212-226 (1957).

⁸ Act of U.S. Congress of March 24, 1934 (48 Stat. 456), approved by the Philippine Legislature on May 1, 1934. FRANCISCO 526.

⁹ See *American Insurance Co. v. Canter*, 1 Peters (U.S.) 511, 542 (1828). See FRANCISCO 509.

¹⁰ The President's Instructions to the Philippine Commission, April 7, 1900.

¹¹ See FRANCISCO 502, 512-521.

¹² Today, English, Tagalog (added in 1940), and Spanish are all official languages of the Philippines. The first two, however, are by far the more widely used.

¹³ See FRANCISCO 502, 512-521.

¹⁴ Laurel, *What Lessons May Be Derived by the Philippine Islands from the Legal History of Louisiana*, 2 PHIL. L.J. 8 (Part I) and 63 (Part II) (1915).

tain its civil law status, and not become a common law jurisdiction, apparently reflecting professional concern then current in the country. What has resulted is a mixed jurisdiction, analogous to that prevailing in other "mixed" legal systems—such as Louisiana, Scotland, South Africa, Ceylon, and Quebec—a system having its roots in both of the two great legal systems of the Western world, the civil and the common law. What has the Philippines taken from one and what from the other? Why, and with what effect? How does "Western" law function in this Asian environment? How has independence affected the prior legal system? Interesting though these questions are,¹⁵ the purpose of this brief article is more restricted—a discussion of several aspects of the procedural system which has emerged from this intriguing context.

COURT STRUCTURE

The judicial system established in 1901¹⁶ by Act of the Philippine Commission¹⁷ was patterned in part along American lines and in part along the antecedent Spanish system.¹⁸ The present system is an outgrowth of that established in 1901.¹⁹

Aside from various special tribunals,²⁰ the courts are organized in a four-tier system. At the apex is the Supreme Court, then the Court of Appeals, Courts of First Instance, and finally Justice of the Peace and Municipal Courts.²¹ The judges of all four tiers are officials appointed by the President, with the approval of the Com-

¹⁵ For some general discussions, see Chester, *Criminal Procedure in the Philippines*, 42 AM. L. REV. 116 (1908); Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33 (1932); Gilmore, *An Experiment in Government and Law in the Philippines*, 16 IOWA L. REV. 1 (1930); Gilmore, *The Development of Law in the Philippines*, 16 IOWA L. REV. 465 (1931); Gilmore, *Philippine Jurisprudence—Common Law or Civil Law?*, 16 A.B.A.J. 89, 134 (1930); Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73 (1914); Johnson, *Courts of the Philippines, Old, New*, 14 MICH. L. REV. 300 (1916); Lobingier, *Blending Legal Systems in the Philippines*, 21 LAW Q. REV. 401 (1905); Lobingier, *Civil Law Rights through Common Law Remedies. Beneficial Result of the Blending of the Two Great Systems of Law in the Philippine Islands*, 20 JURID. REV. 97 (1908); Noble, *Development of Law and Jurisprudence in the Philippines*, 8 A.B.A.J. 226 (1922); Selph, *A Brief Outline of the Growth of Philippine Law*, 23 WASH. L. REV. 301 (1948).

For interesting discussions dealing with aspects of public law in the Philippines see the recent symposium in 40 WASH. L. REV. 403 (1965).

¹⁶ Act No. 136 of the United States-Philippine Commission. See 1 MORAN, COMMENTS ON THE RULES OF COURT 8 (1963) [hereinafter cited as MORAN].

¹⁷ For Discussion of the Philippine Commission, see *infra*.

¹⁸ See Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73, 77-95 (1914); and FRANCISCO 521.

¹⁹ For discussion of the present-day system, see 1 MORAN 8-75.

²⁰ 1 MORAN 57-75.

²¹ For discussion of jurisdiction of the various courts, see 1 MORAN 31-57.

mission on Appointments,²² who in absence of mis-conduct or incapacity are entitled to serve until age seventy.²³

There are several interesting provisions relative to the Supreme Court and Court of Appeals. Apparently to avoid "one-man decisions" by the eleven-Justice Supreme Court, the Constitution provides that a case shall be considered first by the Court as a body, with the conclusions determined by them in advance of assignment for opinion writing.²⁴ Normally, the agreement of six Justices is required for judgment; but to hold a law or treaty unconstitutional or impose the death penalty, a concurrence of at least eight is required.²⁵

Instead of several courts of appeals situated in various places throughout the country, there is but a *single* Court of Appeals, composed of eighteen Justices, with its permanent office at Manila.²⁶ Although authorized to sit *en banc*, it usually sits in separate divisions of three judges each.²⁷ When a case is heard by a division of three judges, all three must agree for judgment; otherwise, two additional judges are assigned to the case. The President of the Philippines, under certain conditions, is empowered to authorize divisions of the Court of Appeals to sit elsewhere;²⁸ but this is not widely

²² 1 MORAN 9, 13, 17, and 24. The Commission on Appointments is composed of twenty-four members, twelve from the Senate and twelve from the House of Representatives, elected by these bodies on the basis of proportional representation of the political parties therein. The President of the Senate is *ex-officio* the Chairman of the Commission. Article VI, Section 12, CONST. OF THE PHIL.

²³ Justices of the Supreme Court and judges of the Court of Appeals are removable from office by impeachment (1 MORAN 10, 14); judges of Courts of First Instance, by the President of the Republic, upon recommendation of the Supreme Court, after hearing (1 MORAN 23); and justices of the peace and municipal court judges, by the President of the Republic, on his own motion or on recommendation of the District Judge of the Court of First Instance (1 MORAN 30).

²⁴ Article VIII, Section 11, CONST. OF THE PHIL.

²⁵ In the absence of the required eight votes, a contested law or treaty is to be deemed constitutional. If the requisite eight votes for the imposition of the death penalty are unobtainable, the law provides that the punishment next most grave is to be imposed (assuming, of course, that at least six justices concur in affirming the conviction). In the latter connection, it should be noted that, whenever a trial judge imposes the death penalty, the case is automatically to be reviewed by the Supreme Court, and the entire case, including factual findings and sentence, is subject to review, whether or not the defendant has taken a formal appeal. Rep. of Phil. Act No. 296 of 1948, Sec. 9. Rules of Court, Rule 122, Sec. 9. See 1 MORAN 10 and 4 MORAN 314-316; and REYES, THE REVISED PENAL CODE, Book 1, 558-562 (1965).

²⁶ For discussion of the organization of the Court of Appeals, see 1 MORAN 17-16.

²⁷ Under the Constitution, the Supreme Court is authorized to sit in two separate divisions unless Congress otherwise provides. Article VIII, Section 4, CONST. OF THE PHIL. Congress has acted to preclude this possibility. Act No. 296 of 1948, Sec. 9.

²⁸ 1 MORAN 16.

utilized. Both the Supreme Court and the various divisions of the Court of Appeals generally sit at Manila, except during the two or three "summer" months of April-June, when both the Supreme Court and the Court of Appeals move to the delightful "summer capital" at Baguio, a mountain resort area.

Although a discussion of the allocation of jurisdiction between the Supreme Court and the Court of Appeals is beyond the scope of this brief article,²⁹ it should be noted that apparently the Court of Appeals was designed as a means of relieving the very overcrowded dockets of the Supreme Court.³⁰ The Court of Appeals is given fairly large jurisdiction, especially to review factual determinations, but the Supreme Court is still unduly encumbered, its dockets much too crowded.³¹ It appears that a reorganization of appellate jurisdiction is needed, transferring more of the Supreme Court's direct and compulsory appellate jurisdiction to the Court of Appeals. The Supreme Court could thus function in the main as a "writ" court (as does the United States Supreme Court) with power through the exercise of discretion to select the cases appropriate for review by the country's highest tribunal. In this way, inordinate delays at the apex of the system could be effectively eliminated, and the whole system much improved. Of course, this plan probably necessitate the appointment of additional justices to the Court of Appeals, but this should be no great obstacle. Although Manila is still the "hub" of the country, the locus of most important litigation and readily accessible by air from other centers of population, it seems to this writer that it would also be desirable for divisions of the Court of Appeals to sit more often in cities other than Manila and thus take justice closer to the people.

ADOPTION OF EARLY PROCEDURAL CODES

By the end of 1901—about three years from Admiral Dewey's victory at the Battle of Manila Bay³²—Philippine civil and criminal procedure had been completely revamped along American lines, and the judicial structure reorganized.³³ The rapid change-over in procedural law is in sharp contrast with developments in Philippine substantive law. American policy, as we have seen, was definitely against precipitous change in private substantive law.³⁴ During the

²⁹ For discussion of the jurisdiction of the two courts, see 1 MORAN 37-45.

³⁰ The Court of Appeals was established shortly after the Philippines became a Commonwealth in 1935, abolished in 1945 after the liberation of the Philippines, but reestablished shortly after independence in 1946. 1 MORAN 13. See FRANCISCO 536.

³¹ See discussion, *infra*.

³² May 1, 1898.

³³ See p. 520, *supra*.

³⁴ See p. 519, *supra*.

course of time, it is true that more and more American substantive law was in fact adopted,³⁵ but this "reception" of American law was by no means universal. In areas closest perhaps to the ordinary citizen, those traditionally regulated by civil and penal codes, Philippine law remains basically Spanish in origin.³⁶

Whereas substantial change in basic civil law would no doubt have been resented (and there seems to have been general agreement by both Americans and Filipinos that it should be left intact), there appears to have been equal or greater agreement by all concerned that radical changes in procedural law, both civil and criminal were greatly needed.³⁷

After the treaty of peace had been signed³⁸ and even before it was ratified, President McKinley appointed a commission, headed by President J. G. Schurman of Cornell University, to visit the Philippines and, *inter alia*, to make recommendations as to what changes should be made in order to ameliorate the condition of the people and improve public order. A month after its arrival early in 1899, the Commission issued a statement promising the people that:

"A pure, speedy and effective administration of justice will be established, whereby the evils of delay, corruption, and exploitation will be effectually eradicated."³⁹

Testimony taken by the Commission⁴⁰ indicated that both civil and criminal procedure were unduly complex, expensive, and time-consuming.

Upon the return and report of the Schurman Commission, the President sent the Taft Commission, which on September 1, 1900,

³⁵ See FRANCISCO 512-521.

³⁶ The present penal code of the Philippines is the Revised Penal Code which went into effect January 1, 1932. It is based on the Spanish Penal Code of 1870, which went into effect in the Philippines in 1887. See GAMBOA 86. In 1950, the Code Commission submitted to the Congress a draft for a new code. See FRANCISCO 542. This proposed code has not been adopted and there is currently a movement to up-date the existing code. Even if the contemplated current changes were adopted, the substantive criminal law would remain basically Spanish and the dominant theory of punishment, retribution. See papers prepared in connection with the Conference on Criminal Law Reform held at the Law Center of the University of the Philippines, July 14-16, 1965.

The Civil Code of the Philippines, which went into effect July 1, 1950, replaced the Spanish Civil Code of 1889, which went into effect in the Philippines the same year. See GAMBOA 85-86, and FRANCISCO 540-542.

³⁷ Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73, 81 (1914); Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33 (1932).

³⁸ December 10, 1898.

³⁹ Quoted in Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73, 75 (1914).

⁴⁰ See REPORT OF THE PHILIPPINE COMMISSION TO THE PRESIDENT, Vol. II, 23-24 (1900).

acquired power to legislate for the Philippines, subject to the overriding authority of the President. As noted above, in his instructions to the Commission, President McKinley demonstrated the concern of the United States government about administration of justice in the Islands.⁴¹

Before the Commission assumed its duties, however, radical reform in criminal procedure had already taken place via military order (General Orders No. 58) issued by the American Military Governor, April 23, 1900.⁴² Containing only 110 relatively brief sections, General Orders No. 58 was a short, straightforward outline of American criminal procedure, and an even briefer summary of the most basic concepts of American evidence law.⁴³ Although it expressly left intact those provisions of prior law not inconsistent with the new code,⁴⁴ it was so broad in its sweep that it in fact supplanted the great body of the prior procedural law.⁴⁵ Significantly, it did not adopt one of the most basic aspects of American criminal procedure—the jury. Also, of great importance, it expressly retained prior law authorizing a person injured by a criminal offense to take part in the criminal prosecution and, as an incident of the criminal action, to recover civil damages. Both of these outstanding differences between Philippine and American procedure will be discussed in greater detail subsequently.

⁴¹ For an excerpt from these instructions, see p. 519, *supra*.

⁴² General Orders No. 58, as subsequently amended, is set out in 4 MORAN 350-378.

⁴³ An obvious critic of the prior system, Enoch H. Crowder, who helped draft the new procedural code, outlined its effects, which were summarized as follows:

"(1) The requirement of a specific complaint or information, charging but one offense; (2) preliminary examination with witnesses, with immediate decision as to holding the prisoner, abolishing the interminable and secret *sumario*; (3) the right of being confronted by the witnesses, of cross-examination, of compulsory attendance of witnesses for defense, of exemption from testimony against one's self—all the methods of the open trial, in place of the secret or semi-secret procedure of the Civil-law countries, and the right also of appeal in all cases; (4) the privilege of demurring to an insufficient complaint and of pleading a former judgment or jeopardy; (5) the right of joint defendants to be tried separately; (6) the right of new trials in cases of errors of law or newly discovered evidence; (7) the extension of such procedure, in a simple form, to the justices' courts; (8) the making of all persons, including defendants, competent witnesses, instead of excluding the accused and his relatives and employees; (9) evidence to be relevant and the best of which the case might be susceptible, doing away with the former free admission of hearsay evidence; (10) extending the privilege of bail not only to lighter offenses, but to all offenses not capital, or where proof or presumption of guilt was strong [sic]; (11) introducing the speedy remedy of *habeas corpus* writ, instead of the theoretical assurance in the Spanish law of 'speedy trial'; (12) safeguarding the issuance and execution of the search-warrants." 1 LE ROY, THE AMERICANS IN THE PHIL. 279 (1914), citing McArthur's Report, 1900, Appendix AA.

⁴⁴ Section 1, General Orders No. 58.

⁴⁵ See FRANCISCO 514.

Reaction of the Filipinos to the new procedural system was very favorable. Speaking of General Orders No. 58, Chief Justice Arelano stated:

"This law, based upon the accusatory system, has abolished the inquisitorial period so derogatory to the rights of the accused, and which was the foundation of our former criminal procedure; the time formerly taken up by this inquisitorial system without the right of intervention on the part of the accused, which at times would be prolonged for years, dependent upon the difficulty of investigation, has been saved; the long period of preventive punishment suffered by the many persons during the long summary examination is now avoided, which said examination was carried on only for the purpose of investigating the commission of a crime and whether any person was guilty thereof; the new procedure provides for complete equality between the accuser and the accused, between the prosecution carried on by the Government and the defense of his personal liberty and security interposed by the defendant; a brief proceeding, which becomes and is public from its initiation, fully provides all that is necessary for a complete defense, and is an absolute safeguard of personal security; this, undoubtedly is the greatest benefit conferred upon the inhabitants of this country."⁴⁶

In March, 1901, by the Spooner Amendment,⁴⁷ the United States Congress expressly conferred upon the President of the United States governmental authority over the Philippine Islands. The President thus no longer had to rely upon war powers for authority, and his prior action in granting the Taft Commission legislative authority was in effect ratified.⁴⁸ On July 4, 1901, by Executive Order, the head of the Commission, William Howard Taft, was named Civil Governor⁴⁹ of the Islands.

Adopted by the Commission as Act 190 on August 7, 1901,⁵⁰ the new code of civil procedure constituted a wholesale adoption of procedure then prevailing in the United States. Act 190 also contained a number of provisions in effect adopting American rules of evidence.⁵¹ Its promulgation had been preceded by extended hearings, in which prominent members of the bench and bar, Filipino

⁴⁶ 1 LE ROY, *THE AMERICANS IN THE PHIL.* 279-280 (1914), citing McArthur's Report, 1900, appendix GG. Another justice of the Philippine Supreme Court, Justice Gregorio Araneta, stated: "This reform has met with general approval and applause, and is looked upon as one of the most positive benefits obtained from the government established in these Islands." Araneta, *Organization of Police and Judiciary*, *Cablenews-American Yearly Review* Number 32 (1911), quoted in MALCOLM, *THE GOVERNMENT OF THE PHILIPPINE ISLANDS* 682 (1916).

⁴⁷ The amendment was a provision inserted in the Army appropriation bill. Act of U.S. Congress of March 2, 1901 (31 Stat. 910).

⁴⁸ FRANCISCO, 503-504.

⁴⁹ The title was thereafter changed to Governor-General. See FRANCISCO 504.

⁵⁰ The new code went into effect on October 1, 1901.

⁵¹ Sections 273-347, Act 190 of the Taft Commission, August 7, 1901.

and American, had been heard.⁵² For much the same reasons giving rise to the dissatisfaction with prior criminal procedure, there was dissatisfaction with the existing civil procedure—delay, technicality, expense.⁵³ Although patterned after prevailing American civil procedures,⁵⁴ there were significant differences, perhaps the most important of which was the non-adoption in the Philippines of the American jury system.⁵⁵ Of special note also is the fact that, because of its civilian heritage, there was in the Philippines no dichotomy between law and equity, and the new procedural code fortunately created none. Praise of the new procedures was lavish.⁵⁶

POST-COMMONWEALTH PROCEDURAL CODES AND THE RULE-MAKING POWER

After successive stages in self-government,⁵⁷ and after numerous Philippine requests for complete independence,⁵⁸ the United States Congress in 1934 adopted the Tydings-McDuffie Law⁵⁹ providing that, after a ten-year transitional period as a commonwealth, the Philippines should be a completely independent country. In accordance with the terms of this Act, elected Filipino delegates met in 1934 to frame their Constitution, the document which was to govern them not only during the Commonwealth, but thereafter as well.

From the standpoint of procedure, it is interesting that the Convention was held during a period when movement for procedural

⁵² See REPORTS OF THE PHIL. COMMISSION 210 (1900-1903).

⁵³ Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73, 81 (1914).

⁵⁴ Many of the provisions, it appears, were taken from the California Code. See Ylagan, *A Practical Program of Procedural Development or Reform for the Philippine Islands*, 7 PHIL. L. J. 241 (1928).

⁵⁵ See discussion *infra*.

⁵⁶ Dean C. Worcester said of the Philippine Commission: "They have resulted in simplifying organization, in decreasing the possibility of corruption and partiality, and in diminishing the cost of litigation and the time which it requires." I WORCESTER, *THE PHILIPPINES, PAST AND PRESENT* 400 (1914).

George Malcolm said that "[t]he greatest contribution to the jurisprudence of the Islands was a Code of Civil Procedure." MALCOLM, *GOVERNMENT OF THE PHILIPPINE ISLANDS* 685 (1916).

The Manila Times said: "With such reformation of the laws as the Commission has already accomplished and that which it has in view, it will be impossible for the administration of justice to be retarded as in the past with the system of challenging and dallying until the delay became paramount to a defeat of justice itself. Cases will be able to be brought to trial without the vexations and delays that have attended the trial of causes under former methods." MANILA TIMES, April 23, 1901, p. 1. See also Harvey, *The Administration of Justice in the Philippine Islands*, 9 ILL. L. REV. 73, 97 (1914).

⁵⁷ Act of U.S. Congress of July 1, 1902 (32 Stat. 691)—Philippine Bill; Act of U.S. Congress of August 29, 1916 (39 Stat. 545)—Jones Law.

⁵⁸ See 2 ZAIDE, *PHILIPPINE POLITICAL AND CULTURAL HISTORY* 299-314 (1957).

⁵⁹ Act of U.S. Congress of March 24, 1934 (48 Stat. 456).

reform was particularly strong in the United States. The enabling act authorizing the United States Supreme Court to formulate uniform rules of civil procedure for federal district courts had just been passed.⁶⁰ The Filipinos were quite aware of American thinking and developments of the period, and the views of such men as Pound and Sunderland were cited.⁶¹

On the urgings of Vicente Francisco,⁶² the Constitutional Convention adopted a provision giving rule-making power to the Philippine Supreme Court,⁶³ subject, however, to the power of the Philippine Congress to repeal, alter, or supplement the rules. The procedural codes which had been patterned after American procedures and adopted during the early period of American sovereignty⁶⁴ had remained basically intact, and they along with other procedural legislation were by the Constitution automatically repealed as statutes and converted into rules of court. Thereafter, integrated "Rules of Court", promulgated by the Philippine Supreme Court, went into effect on July 1, 1940, a comprehensive work regulating civil procedure, special proceedings, criminal procedure, evidence,⁶⁵ and admission to the practice of law. In large measure, the work was a restatement and regrouping in more logical sequence of prior law and jurisprudence.⁶⁶ But it was more than a mere restatement; it

⁶⁰ The enabling act (48 Stat. 1064) was passed June 19, 1934, and the Philippine Convention convened July 30, 1934.

⁶¹ JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE PHILIPPINES, Vol. II, No. 56 (October 4, 1934) 594-597.

⁶² Later Ambassador to the United Nations and member of the Philippine Senate.

⁶³ Article VIII, Section 13, CONST. OF THE PHIL. The Provision reads as follows:

"The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."

⁶⁴ See *supra*.

⁶⁵ In light of current discussion in the United States as to the authority of the United States Supreme Court to promulgate rules of evidence for the federal district courts [see Green, *To What Extent May Courts under the Rule-making Power Prescribe Rules of Evidence?* (Ross Prize-Winning Essay, 1940), 26 A.B.A.J. 482 (1940); and A Preliminary Report on the Advisability and Feasibility of Developing Uniform Rules of Evidence for the United States District Courts (Report of the Special Committee on Evidence to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, 1962)], it is interesting that in the Philippines the authority to issue "rules concerning pleading, practice and procedure" is deemed to include authority to issue rules of evidence. See *Bustos v. Lucero*, 81 Phil. 640 (1948); and 1 MORAN 78.

⁶⁶ Moran, *Foreword to the First Edition*, contained in 1 MORAN xi-xiii.

was greatly influenced by modern procedural developments, especially the then new United States Federal Rules of Civil Procedure. In the words of Chief Justice Moran of the Philippine Supreme Court, it adopted:

"new methods of procedure, such as, a more liberal joinder of claims and parties; greater flexibility in the amendment of pleadings; the abolition of demurrer and its substitution with the motion to dismiss; suppression of general denial in answer; allowance of new system of counterclaims, cross-claims, third party claims, fourth party claims, etc. in a single proceeding to avoid multiplicity of suits; a more effective system of bill of discovery which does away with that old and obnoxious practice of secrecy and surprises in the preparation and trial of cases; institution of pre-trial; summary judgments in all kinds of actions; uniformity of appeals; shortening of periods within which pleadings may be filed, proceedings taken, and adjournments allowed, etc."⁶⁷

In part to provide procedural implementation of the substantive provisions of the Philippine Civil Code, which went into effect in 1950, the Supreme Court commenced revision of the Rules of Court in 1958. Going into effect on January 1, 1964, the new Rules of Court are a retouched version of the 1940 Rules, retaining the basic procedural system.

THE ABSENCE OF THE JURY SYSTEM

Philippine adjective law reads in the main like American law. One of the most characteristic features of Anglo-American procedure, however, the jury system, is absent. Why was it not transplanted along with the rest? What are the consequences of its non-adoption? The complete answers to these obvious questions are not altogether clear.

When the Schurman Commission made its recommendations to President McKinley⁶⁸ as to the steps that should be taken to improve the administration of justice in the Philippines, it did in fact recommend that trial by jury be instituted in "due time",⁶⁹ but this recommendation was never implemented. It must be remembered that from 1899 to 1902 Americans and Filipinos were engaged in the bloody encounter which Americans call the Philippine Insurrection and Filipino historians call the War for Philippine Independence,⁷⁰ and this may well have been a factor in the rejection of the 1900 recommendation of the Schurman Commission.

⁶⁷ 1 MORAN xii.

⁶⁸ See *supra*.

⁶⁹ REPORT OF THE PHILIPPINE COMMISSION TO THE PRESIDENT, Vol. I, p. 125 (1900).

⁷⁰ See 2 ZAIDE, PHILIPPINE POLITICAL AND CULTURAL HISTORY 212-226 (1957).

Early in the period of American sovereignty, however, practically all other of our basic procedural safeguards were extended to the Philippines.⁷¹ The non-availability of jury trial, even for American citizens in the Philippines, was upheld by the United States Supreme Court.⁷²

Factors contributing to initial rejection of the jury system probably included the following: Filipinos had had no experience with juries; their traditions and cultural patterns were quite different from those of Britain and the United States; general educational level was low;⁷³ and there was no single common language which could be understood by witnesses and jurors throughout the country.

Early in the American period, a step in the direction of the jury system was in fact taken. In the civil procedure code which went into effect October 1, 1901, a middle course was adopted—an optional assessor system⁷⁴ which could have been a bridge between the judge trial method and the jury system.⁷⁵ The code stipulated that, upon the request of either party, two lay assessors were to be selected to advise the trial court. Although the responsibility for ultimate decision remained with the court, written dissents of the assessors could be taken into consideration on appeal. In time, the assessor device was extended to criminal cases,⁷⁶ but it appears to have been rarely used in either area.⁷⁷ Although there is no refer-

⁷¹ See The President's Instructions to the Philippine Commission, April 7, 1900. See FRANCISCO 507-508, 512-513.

⁷² U.S. v. Dorr, 195 U.S. 138 (1904). See discussion in Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 34-36 (1932).

⁷³ See TAYLOR, *THE PHILIPPINES AND THE UNITED STATES: PROBLEMS OF PARTNERSHIP* 72-73 (1964).

⁷⁴ Act 190 of the Taft Commission, August 7, 1901, Sections 57-62 for trial in justice of the peace courts, and Sections 153-161 for trial in the courts of first instance, set out in 2 MORAN 570-574.

⁷⁵ The Philippine Commission said: "While the conditions here are for the present unsuited to the introduction of the Anglo-Saxon system of jury trials, provision is made for the selection of assessors from the residents of the municipality or province best fitted by education, natural ability and reputation for probity to assist in the trial of actions and to advise the judge in his determination, and securing the right of review of the facts by a higher court in case the assessors shall certify that in their opinion the finding of facts and the judgment are wrong. The provisions for assessors apply in courts of the justices of the peace as well as in courts of first instance. This system is one that was adopted under the treaty of Berlin for use in Samoa under the protectorate, and has long been usefully employed in British and German colonial possessions. The employment of assessors is useful not merely as an aid to the judge but also as giving a greater safeguard to the parties, and as a means of education for the people." REPORTS OF THE PHILIPPINE COMMISSION 212 (1900-1903).

⁷⁶ See Act No. 267 (1901); Act No. 2369 (1914); Act No. 2520 (1915).

⁷⁷ See Justice George Malcolm's dissenting opinion in *Barberi v. Concepcion*, 40 Phil. 320, 324 (1919), and statement of Dean Vicente G. Sinco in SINCO, *PHILIPPINE POLITICAL LAW* 347 (1862).

ence in the 1940 Rules of Court to the assessor system, provisions with respect to it were incorporated in the 1964 Rules⁷⁸—not, it appears, because of any great attachment for the device, but because

⁷⁸ Rule 32 of the 1964 Rules of Court provides as follows:

"SECTION 1. *Preparing list of assessors.*—The judge, with the assistance of the governor of the province or the mayor of the chartered city where the court sits, and the provincial or city fiscal, shall prepare a list of the residents of the province best fitted by education, natural ability, and reputation for probity, to sit as assessors in the trial of actions. Such list shall contain not less than ten and not more than twenty-five names, and shall be retained in the office of the clerk. The name of any person may be stricken from the list, at any time, upon the order of the judge, upon his becoming satisfied that the name ought to be stricken out by reason of the death, permanent disability, or unfitness of the person named, and in case names are so stricken out, other names shall be added in their place, to be selected as provided in this section.

"SEC. 2. *Rights of parties to have assessors, and manner of selecting them.*—Either party to an action may, twenty (20) days or more before the trial, apply in writing to the judge for assessors to sit in the trial. Upon the filing of such application, the judge shall direct that assessors shall be provided, and that the parties forthwith appear before him for the selection of the assessors. If the parties cannot agree on the choice of two assessors from the list provided for in the preceding section, the assessors shall be selected from the aforesaid list in the following manner, in the presence of the judge or clerk: the plaintiff shall strike out from the list one name; then the defendant may strike out another, and so on, alternately, the parties shall strike out names, until but two remain on the list. The remaining two shall be the assessors to sit in the trial; but if one or both of them are disqualified by law to sit as assessors, then the judge or clerk shall draw one name or more, as the case may be, by lot, from those stricken out, and the person or persons thus drawn shall act as assessors, unless disqualified by law, in which case the vacancy shall be filled by lot, as above provided.

"SEC. 3. *Summoning assessors.*—The persons so selected as assessors shall, under the seal of the court, be summoned to attend and serve as assessors in the action, and the summons for that purpose shall be served in the same manner as other writs or summonses.

"SEC. 4. *Failure of assessors to attend.*—If any person, summoned to act as assessor, fails, without lawful excuse, to attend at the trial, or at any adjournment thereof, or to continue to serve throughout the trial, he shall be liable as for contempt of court.

"SEC. 5. *Excusing assessors.*—The court may, on reasonable cause shown, excuse from attendance generally, or in any particular case, any person summoned, or liable to be summoned, as assessor, and may, for like cause, discharge from attendance, in any particular case, any person who is acting as assessor thereon.

"SEC. 6. *Compensation of assessors.*—Each assessor shall receive a compensation of ten pesos (P10) per day for the actual time by him employed in the trial of the action and in advising the judge as to the decision thereof, to be advanced out of the provincial or city funds but to be taxed as costs against the defeated party and then refunded to the province or city concerned.

"SEC. 7. *Oath of assessors.*—Before entering upon the performance of his duty, in any action, each assessor shall be sworn by the judge, or by the clerk of court, to the faithful and honest performance of his duties as such assessor.

"SEC. 8. *Duties of assessors.*—The duties of assessors, when their aid is invoked as herein provided, shall be to sit with the judge during the trial of an action and to advise him in the determination of all questions of fact involved therein; but the final responsibility for the decision must rest with the judge.

"SEC. 9. *Effect of dissent of assessors.*—If one or both assessors shall be

the Philippine Supreme Court had held that its rule-making authority did not give the Court the power to delete it.⁷⁹

For many of the same reasons contributing to the rejection of the jury system during the early stages of American rule,⁸⁰ the Philippines still do not have a jury system. Filipinos do not lament the absence of the institution; in fact, there has never been any substantial movement to establish it.⁸¹ The overwhelming majority of Filipinos with whom the writer has discussed the matter feel that it would not be in the best interests of the country to adopt jury trial. They talk of the character and traditions of the people, the sectional differences, and allude also to the possibilities of juror corruption. Clearly they prefer to entrust decision making to trained jurists rather than to untrained jurors. They have the intimate knowledge of the people, their traditions, culture, and sense of justice which this outsider lacks.

In the American procedural system, the jury is, of course, a core institution, greatly affecting our entire legal system. Its absence from Philippine procedure likewise has far-reaching effects. It might be supposed that, because of the non-availability of juries, trials in the Philippines are quite expeditious, but such is far from the case. Instead of a trial being a continuous hearing in which all of the available testimony is adduced and heard, it is only too frequently a fragmented affair extending over months and even years. In Philippine courts, after one or two witnesses are heard, the trial is often continued until a later date, and this process seems to go on and on. Of course, such piecemeal trial is not a necessary consequence of judge trial, but it does not preclude it, and a number of other factors promote it.⁸²

The absence of a jury affects the whole atmosphere of a trial, and the way a lawyer goes about his work. In the Philippines, the judge is the decision maker; the forensics designed to impress jurors and arouse their sympathy are absent. Court hearings in the Philippines thus tend to be much less dramatic than in the States.

of the opinion that the findings of fact in the judgment in the action are wrong, he or they shall certify, in writing, his or their dissent therefrom and their reasons for such dissent and sign such certification, which shall be filed with the other papers in the action. In case such dissent is filed, the appellate court, on appeal, shall give to the dissent aforesaid such weight as in its opinion it is entitled to, and render such judgment as it finds just."

⁷⁹ See 2 MORAN 153.

⁸⁰ See *supra*.

⁸¹ For Philippine discussion of the jury system, see articles in THE FILIPINO HOME COMPANION (June, 1958) 9: Laurel, *Some Drawbacks to the American Jury System*; Quisumbing, *On the Jury System for the Philippines* (urging the establishment of trial by jury in capital cases).

⁸² For discussion of delay in Philippine proceedings, see *infra*.

The fact that there are no juries has considerable effect upon the role of the appellate courts. The decisions of the judge are subject to review, both on facts and law, and on reversal the appellate court has the power to render the judgment which it feels the lower court should have entered.⁸³

Although never adopting the jury, the Philippines have the Anglo-American rules of evidence, which in their formulation were so heavily influenced by the jury context in which they evolved. It appears, however, that in the Philippines, because of the judge trial and the power of the appellate court to review both facts and law, exclusionary rules are much more liberally applied.⁸⁴ Philippine trial judges often tend to let in evidence which in an American jury trial would be excluded. It is seldom that a case is reversed on appeal because of a trial court's erroneous admission of evidence, only for the rare erroneous and prejudicial exclusion. Objections of counsel consequently tend to be much less frequent, for they have much less chance of success either in the trial court or on appeal.

The role of the jury in personal injury litigation is one of the best examples in American law of the impact of mode of trial on substantive results. Sympathetic American juries have tended to be very generous with "other people's" money, and their plaintiff verdicts have encouraged the growth of liability insurance. The prevalence of liability insurance has in turn resulted in even more generous plaintiff verdicts. This "socialization of the risk" is by no means so present in the Philippines as in the United States. Although liability insurance is available, relatively few seem to take advantage of it. Personal injury judgments seem quite low,⁸⁵ even considering the different standard of living, and the absence of jury trial is in all probability a contributing factor.

JOINDER OF CIVIL AND CRIMINAL ACTIONS

There are two major differences between the procedural law of the Philippines and that of the United States. One is the non-availability in the Philippines of jury trial;⁸⁶ the other is the Philippine procedure by which both civil and criminal liability may be, and generally are, adjudicated in a single proceeding.

⁸³ 1 MORAN 40. See Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 44-45, 50 (1932). See Rule 124, Sec. 11; Rule 125, Sec. 1.

⁸⁴ Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 48-49 (1932). See SALONGA, *PHILIPPINE LAW OF EVIDENCE* 8-9 (1955).

⁸⁵ See REYES, *THE REVISED PENAL CODE*, Book I, 793-802 (1965).

⁸⁶ See discussion *supra*.

When by General Orders No. 58⁸⁷ American-type accusatorial criminal procedure was substituted for the prior Spanish inquisitorial system, civil-criminal joinder was one of the few Spanish procedural devices retained.⁸⁸ Philippine substantive law provides that "every person" liable criminally for a violation of the Revised Penal Code is also liable civilly.⁸⁹ Procedurally, the dual liability (civil and criminal) generally resulting from a prohibited act is normally determined in a single proceeding. Unless the injured civil party expressly waives his civil action, or "reserves" his right to institute it, his civil action is impliedly instituted along with the criminal action.⁹⁰ Although prosecution of the criminal offense is under the direction and control of the public prosecutor,⁹¹ the injured party who has not waived or reserved his civil action may intervene in the criminal proceeding.⁹² The public prosecutor retains ultimate control of and responsibility for a case, but he may permit the attorney for the injured party to conduct the prosecution.⁹³ Generally, the criminal action takes precedence over a separately-instituted civil action, which if already commenced must be sus-

⁸⁷ Issued April 23, 1900. See discussion *supra*.

⁸⁸ For a discussion of this procedure in modern Spanish law, see Murray, *A Survey of Criminal Procedure in Spain and Some Comparisons with Criminal Procedure in the United States*, 40 N. DAK. L. REV. 7, 16-18 (1964). For discussion of analogous procedure in French law, see Howard, *Compensation in French Criminal Procedure*, 21 MOD. L. REV. 387 (1958); and Pugh, *Administration of Criminal Justice in France: An Introductory Analysis*, 23 LA. L. REV. 1, 12 (1962).

Section 107, the pertinent section of General Orders No. 58, read as follows:

"XIV.—RIGHTS OF PERSON INJURED BY THE OFFENSE

"SEC. 107. The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promotor fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

⁸⁹ REVISED PENAL CODE OF THE PHILIPPINES, Articles 3 and 100. See REYES, *THE REVISED PENAL CODE*, Book 1, 755-809 (1965). Of course, the ambit of the article is not so universal as it sounds. There are, for example, some violations of the Penal Code where there is no injured civil party. See discussion in 4 MORAN 67 and 1 REYES, *THE REVISED PENAL CODE*, Book 1, 755-756 (1965).

⁹⁰ Rule 111, Section 1.

⁹¹ Rule 110, Section 4. The public prosecutor in the Philippines is called the fiscal, as in Spain, and is an appointed official.

In certain cases, as for example adultery and concubinage, prosecution may not be had except on the complaint of the injured civil party, who loses the power if she pardons the offender. Article 344, REVISED PENAL CODE; RULES OF COURT, Rule 110, Section 4. This approach also is Spanish in origin. See Murray, *A Survey of Criminal Procedure in Spain and Some Comparisons with Criminal Procedure in the United States*, 40 N. DAK. L. REV. 7, 17 (1964).

⁹² Rule 110, Section 15, quoted in footnote 96, *infra*.

⁹³ See 4 MORAN 8.

pended until final judgment in the criminal action is reached.⁹⁴ In certain cases, however, notably those involving infringement of basic civil liberties and physical injuries, a civil action entirely separate and distinct from the criminal action may be brought and prosecuted during the pendency of the criminal action, provided this right has been reserved.⁹⁵

It is beyond the scope of this article to attempt a detailed discussion of the provision governing the civil-criminal joinder,⁹⁶ but it should be noted that the importance of the provisions is greatly enhanced by the fact that, with respect to injuries to persons and

⁹⁴ Rule 111, Section 3, quoted in footnote 96, *infra*.

⁹⁵ Rule 111, Section 2, quoted in footnote 96, *infra*.

⁹⁶ The provisions of the Rules of Court particularly applicable are: Rule 110, Section 15:

"SEC. 15. *Intervention of the offended party in criminal action.*—Unless the offended party has waived the civil action or expressly reserved the right to institute it separately from the criminal action, and subject to the provisions of Section 4 hereof, he may intervene, personally or by attorney, in the prosecution of the offense."

and Rule 111:

"SECTION 1. *Institution of criminal and civil actions.*—When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately.

"SEC. 2. *Independent civil action.*—In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

"SEC. 3. *Other civil actions arising from offenses.*—In all cases not included in the preceding section the following rules shall be observed:

"(a) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action can not be instituted until final judgment has been rendered in the criminal action;

"(b) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted, and the same shall be suspended in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;

"(c) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reputation or indemnity for the damage suffered.

"SEC. 4. *Judgment in civil action not a bar.*—A final judgment rendered in a civil action absolving the defendant from civil liability is no bar to a criminal action.

"SEC. 5. *Suspension by reason of pre-judicial question.*—A petition for the suspension of the criminal action based upon the pendency of a pre-judicial question in a civil case, may only be presented by any party before or during the trial of the criminal action."

See discussion in 4 MORAN 61-77. See also provisions of the Revised Penal Code particularly applicable, Articles 38, 39, 100-113, and the discussion in REYES, REVISED PENAL CODE, Book 1; 335-550, 755-809. (1965).

property, Philippine substantive criminal law is much broader in scope than American law, embracing many harms which under American law would be civilly actionable only. Under Article 365 of the Philippine Revised Penal Code, *any act* which would be criminal if committed intentionally is also criminal if committed by "simple" or "reckless" imprudence. The penal sanction, however, is reduced as the result of the less blameworthy state of mind. The fact that injury to person and property caused by *simple* imprudence is actionable criminally (when coupled with the procedure for civil-criminal joinder) means in effect that the vast majority of what in the United States would be ordinary tort litigation, in the Philippines is subject to adjudication as an adjunct of criminal proceedings.

In practice, the injured civil party is usually unrepresented by private counsel in the criminal proceeding, for it appears that only too often the claimant is unable to afford to pay private counsel in advance of judgment. Proceedings are so long and recovery so small that attorneys may be unwilling to handle such cases on a contingency fee arrangement.⁹⁷ Personal injury litigation seems to be a relatively unlucrative field for Philippine lawyers, occupying a much less significant part of law practice than it does in the States. It appears that civil claims are often compromised, and that once this is done the public prosecutor frequently does not press the criminal case. Thus, the broad criminal liability in effect acts as a stimulant to force settlements of civil claims. Interestingly, the criminal law governing punishment also contains an inducement to payment of civil liability. In many instances, unless a convicted party satisfies the judgment for civil damages, he is obligated to serve additional time in prison, called "subsidiary imprisonment."⁹⁸

⁹⁷ Although there are provisions in the Rules of Court which might be utilized to appoint counsel to represent indigent civil parties, it appears that, in practice, counsel for indigent civil claimants in civil or criminal proceedings are rarely, if ever, appointed. There is, however, a system for appointing and compensating (to some extent) attorneys for indigent defendants in criminal cases. See Rule 138, Sections 31 and 32.

⁹⁸ Article 39. PHILIPPINE REVISED PENAL CODE, provides:

"ART. 39. *Subsidiary penalty*.—If the convict has no property with which to meet the pecuniary liabilities mentioned in paragraphs 1st, 2nd and 3rd of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each 2 pesos and 50 centavos, subject to the following rules:

"1. If the principal penalty imposed be *prisión correccional* or *arresto* and fine, he shall remain under confinement until his fine and pecuniary liabilities referred to in the preceding paragraph are satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.

"2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

DELAY

Delay is a disease that can gnaw at the vitals of any procedural system. It has been seen that, when American-type civil and criminal procedure was substituted for the prior Spanish procedure, inordinate delay constituted a major criticism of the old system. Delay, however, is not the peculiar affliction of any particular system; it is a constant threat to all. Its causes are varied, and elimination of some does not preclude the presence of others. Although many of the former causes of delay in the Philippines may have been removed, (and it appears that efficiency and celerity were at least for a time in fact achieved),⁹⁹ delay is again a most serious problem in the country.

In many jurisdictions of the United States, especially in the large metropolitan areas, there is also a delay problem of monstrous proportions, but its impact is less pervasive. And in many respects the causes, and hence the cures, are different.

Delay in the Philippines has reached the point that some Philippine observers use very strong language indeed to describe it. In 1957, a judge of the Court of First Instance stated:

"But conspiracy of circumstances renders delay so inevitable that, believe it or not, the aforesaid eight-year inaction in the Cabansag ejectment case shrinks into insignificance when compared with many other civil cases pending in court for as long as the last fifteen years, and criminal cases as old as five years. Indeed, notwithstanding the superhuman efforts required of judges of Courts of First Instance by our Secretary of Justice to completely hear and decide at least thirty cases a month, the backlog of CFI cases throughout the Philippines has piled up instead of diminished [sic] during the last eleven years."¹⁰⁰

"3. When the principal penalty imposed is higher than *prisión correccional* no subsidiary imprisonment shall be imposed upon the culprit.

"4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.

"5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from reparation of the damage caused, nor from indemnification for the consequential damages in case his financial circumstances should improve; but he shall be relieved from pecuniary liability as to the fine."

⁹⁹ "The Philippine system of procedure, as an instrument for the enforcement of criminal law, is far superior, it is believed, to that employed in the United States. The procedure is swift, but no essential right of the accused is sacrificed to celerity." Fischer, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 49 (1932).

¹⁰⁰ Morfe, *Delayed Justice, or Railroaded "Justice"*—Which?, 22 LAW. J. 529 (1957).

Mr. Salvador Mariño, Secretary of Justice, writing in 1964, commented:

"In a civil suit, attorney's fees grow until they sometimes equal or exceed the amount of damages awarded. A poor person, badly in need of money and impatient with the apparent procrastination of the courts, may

In 1961, an editorial in a leading professional journal lamented, "The judicial system of the country is almost paralyzed."¹⁰¹ In 1945, the year before independence, there was a backlog in the Court of First Instance of 8,471¹⁰² cases, rising to 70,556 by 1957,¹⁰³ and to some 80,000 in 1961.¹⁰⁴ The condition of the dockets today seems little improved.

One of the causes for the backlog buildup was that, apparently because of political considerations,¹⁰⁵ many of the vacancies in authorized judgeships went unfilled.¹⁰⁶ It is reported that, because of this, in 1961 over one-half of trial courts were without judges.¹⁰⁷ Today, also, there are a number of unfilled vacancies. Although in our own country similar political considerations have hampered adequate staffing of our courts,¹⁰⁸ it appears that politics in the Philippines is far more enervating than in the United States.

Another of the major causes of delay in the trial courts has already been noted, the practice of piecemeal trials. Instead of a case being tried continuously until completion, very often there are bit-by-bit hearings over a prolonged period of months and even years. Frequently, direct and cross-examination of a witness are separated by continuances while bits and pieces of other cases are tried. Inefficiency and delay of inordinate proportions result.

finally agree to accept a small sum in full payment of a large debt rather than undergo a further period of uncertainty. In such cases, delay is a form of unfairness that should not be tolerated."

Mariño explains delay in disposition of court litigations, *THE SUNDAY CHRONICLE* (Manila), August 23, 1964, p. 7.

¹⁰¹ Editorial: *Deplorable State of the Administration of Justice*, 26 *LAW J.* 193 (1961).

¹⁰² Morfe, *Delayed Justice, or Railroaded "Justice"—Which?*, 22 *LAW J.* 529 (1957).

¹⁰³ *Ibid.*

¹⁰⁴ See Sabado, *Wheels of Justice Grind Slowly—Very Slowly*, *WEEKLY GRAPHIC MAGAZINE*, May 31, 1961, p. 10, reprinted in 6 *JOURNAL OF THE COURT OF AGRARIAN RELATIONS* 145 (1961); and Editorial: *Deplorable State of the Administration of Justice*, 26 *LAW J.* 193 (1961).

¹⁰⁵ Political differences between the President (the appointing authority) and members of the Commission on Appointments (the confirming authority) as to composition of the Commission on Appointments. See discussion in footnote 22 *supra*.

¹⁰⁶ Editorial: *Deplorable State of the Administration of Justice*, 26 *LAW J.* 193 (1961); and Sabado, *Wheels of Justice Grind Slowly—Very Slowly*, *WEEKLY GRAPHIC MAGAZINE*, May 31, 1961, p. 10, reprinted in 6 *JOURNAL OF THE COURT OF AGRARIAN RELATIONS* 145, 145-146 (1961).

For a proposed remedy to the appointment snarl in the Philippines, see Editorial: *Politics and the Bench*, 26 *LAW J.* 193 (1961); and Editorial: *Manner of Appointment of Judges*, 26 *LAW J.* 194 (1961).

¹⁰⁷ Editorial: *Deplorable State of the Administration of Justice*, 26 *LAW J.* 193 (1961).

¹⁰⁸ See, for example, the discussion in Karlen, *Federal Jurisdiction and Practice*, 34 *N.Y.U. L. REV.* 117-118 (1959), reprinted in 1958 *ANNUAL SURVEY OF AMERICAN LAW* 639-640 (1959).

The causes for the split-trial practice are not altogether clear. The absence of jury trial¹⁰⁹ makes it possible, but is itself not the cause. Some Filipinos say the practice results from the crowded condition of the dockets and the fact that the lawyers are so busy, but surely the efficiency of both court and attorney would be enhanced if cases were heard in their entirety, one trial at a time, thus eliminating much lost motion. Perhaps the practice of piecemeal trial is a present-day reflection, in different procedural context, of Spanish procedures to which the profession and the public had long ago become habituated.¹¹⁰ It may be, however, as has been suggested to the writer by a prominent Filipino, that the practice is due in part to cultural factors. Filipinos do not seem as pressed for time as Americans; they seem more willing to wait for "solutions," and delay allows time for "cooling off," time for hard feelings to soften. Another factor may be in judicial attitudes, greater willingness on the part of the judge to let the parties take their time, a desire to delay the ultimate day when one of the contestants must be declared the loser. Some Filipinos have suggested to the writer that a cause of delay is the system by which Filipino attorneys are sometimes paid for their services. Often they are paid by court appearances, and thus even for the plaintiff lawyer delay is not necessarily a financial hardship. Contingency fees are much less frequent in the Philippines than in the United States;¹¹¹ thus, this built-in incentive to celerity is not as often present.

Whatever the reasons for it, there is a very high incidence of continuances during trial, despite efforts to reduce it. The Rules of Court prohibit adjournments during trial for "a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Chief Justice of the Supreme Court."¹¹² The rule, however, does not appear to have achieved the desired result.¹¹³ A new provision was inserted in the 1964 Rules:

"SEC. 6. *Annual Conference on pending cases.*— At the end of one year from the day the trial proper has commenced, and every year thereafter, if the trial has not been terminated, the judge shall call the parties and their counsel to a conference to device ways and means of ter-

¹⁰⁹ See discussion *supra*.

¹¹⁰ See Murray, *A Survey of Civil Procedure in Spain and Some Comparisons with Civil Procedure in the United States*, 37 TUL. L. REV. 399, 400 (1963); and Murray, *A Survey of Criminal Procedure in Spain and Some Comparisons with Criminal Procedure in the United States*, 40 N. DAK. L. REV. 7, 8-9 (1964) for discussion of modern Spanish civil and criminal procedures.

¹¹¹ A reason for less use of the contingency fee appears to be due in part to the law quantum recovered and, circularly, the delay. See discussion *supra*.

¹¹² Rule 22, Section 3.

¹¹³ For discussion of the provision, see 1 MORAN 486, 493.

minating the trial. A statement of the result of the conference, signed by the judge and counsel, shall be attached to the record, showing the reason why the trial has not terminated; number and names of witnesses yet to be presented by the parties; any facts stipulated during the conference; the efforts exerted to settle the case and similar matters. Copy of the statement shall be furnished the Supreme Court and the Secretary of Justice within ten (10) days after such conference."¹¹⁴

The Supreme Court docketts themselves, however, are severely encumbered; and, until reorganization of appellate jurisdiction is achieved,¹¹⁵ it will be difficult for it to implement effectively even this modest provision.

A bill introduced in the last session of the Philippine Congress¹¹⁶ by Senator Diokno would transfer administrative supervision over the court system from the Department of Justice to the Supreme Court. To assist the Supreme Court in exercising the new authority, the bill would create the Office of the Administrator of Courts, with broad responsibilities. This type of approach has proved very effective in many jurisdictions of the United States and would seem to fit in very well with the rule-making power of the Philippine Supreme Court.¹¹⁷ Its adoption in the Philippines would probably prove very beneficial.

In an interesting article discussing the various causes and cures of delay, Mr. Salvador Mariño, Secretary of Justice, stated:

"Maintaining popular confidence in the courts requires a radical change in fundamental attitudes and concepts. The basic problem is to overcome inertia, since the root cause of delay lies in its being taken for granted. The change to be made is in a state of mind where lawyers and judges expect delay and adjust their work habits accordingly, so that even clients reluctantly resign themselves to the situation."¹¹⁸

Whatever the causes and whatever the solutions, it is quite clear that inordinate delay is a most serious problem in the Philippines. In many parts of the United States, particularly in the large urban centers, delay is also a very real problem. Availability of speedy and inexpensive justice through the courts is the procedural goal of both countries,¹¹⁹ its attainment a constant challenge.

¹¹⁴ Rule 22, Section 6. See 1 MORAN 493.

¹¹⁵ See discussion *supra*.

¹¹⁶ Senate Bill No. 778, Fifth Congress of the Philippines, Fourth Session (1965).

¹¹⁷ See discussion *supra*.

¹¹⁸ Mariño explains delay in disposition of court litigations, *THE SUNDAY CHRONICLE* (Manila), August 23, 1964, p. 7.

¹¹⁹ See Rule 1, U.S. FEDERAL RULES OF CIVIL PROCEDURE, and Rule 1, Section 2, PHILIPPINE RULES OF COURT.