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Foreword [to Philippine Symposium]

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FOREWORD

A combination of national, economic and scientific concerns has stimulated the interest of American law schools in the legal theories and practices of other countries. The national interest of the United States in the political attitudes and systems of allies and neutrals, especially in Asia, has called for a deeper understanding of the process by which underdeveloped countries adjust to the facts of the modern world than was necessary before World War II. The stationing of American troops abroad involves status of forces agreements which have to be adjusted to legal systems and conditions very different from our own. The vast increase in public and private economic relations with the non-western world, in commerce, investment, and economic aid, calls for legal expertise and stimulates a growing interest in the legal theory and practice of other societies. At the same time that all these facts have brought to our attention the state of the law in other countries, there has been developing in American law schools during the last two or three decades a strong interest in the relation between law and society and, by extension, in comparative law. American scholars, trained in law and in Asian languages, have already made significant contributions to our understanding of present practice as well as the history of law in such countries as Japan, China, the Philippines, and some of the countries of Southeast Asia.

Law in the Philippines is of particular interest to the American lawyer, practitioner, or scholar. Since 1946 the Filipinos have been making their own laws and establishing their own procedures, whereas previously their legal system had been tied in with that of the United States. Forces no longer within our control now affect our dealings with the Filipinos and must therefore be understood. For the first time in Philippine history, law is an instrument not only of domestic but also of foreign policy. Many of the problems that arise in our relations with the Philippines involve questions of law and legal practice. New legislation affecting the property rights and business activities of aliens raises problems for American investors and business men that call for careful judgments based on a knowledge of the political processes in Philippine society as well as of the legislation itself. The famous "parity" clause of the Trade Act of 1946 which gave to American citizens and corporations the same rights as Philippine nationals in the exploitation of natural resources and the ownership and opera-

tion of public utilities has become a political issue of serious proportion in spite of the later re-negotiation of the act. The Military Bases Agreement of 1947 by which the United States secured a ninety-nine year agreement providing for twenty-three army, navy, or airforce bases at various points in the Philippines and the right to use part of the Manila port area on the same basis as any private party, although modified in later agreements, has given rise to a whole cluster of legal problems, in addition to that of the status of forces, to plague our relations with the Philippines. In spite of the fact that the United States helped to fashion the legal system of the Philippines for nearly fifty years we have had more difficulty in arriving at a status of forces agreement with our former colony than might have been expected. We are obviously dealing with a people struggling to establish their independence and to determine the direction and quality of their national life.

The essays in this symposium bring out two themes—the relation of the American model to the substance and practice of law in the Philippines and the influence of the spirit of nationalism. Neither can be fully understood without reference to the past, for both have been fundamentally affected by the half century of American occupation. The substance of the law clearly owes most to the American model although Spanish civil law was not, in certain important areas, discarded. The Constitution of 1936, drawn up by an elected convention under the chairmanship of the late Senator Claro Recto, strongly reflects the tone and form of the American Constitution. It had to be a document acceptable to the United States Congress but this was not as difficult for Filipinos to produce as might have been expected. The Constitution, in fact, bears many resemblances to the Malolos constitution of 1899 which the leaders of the Philippine revolution wrote when they were setting up an independent republic. When the Filipinos were fighting against Spain, as when they were opposing American conquest, they were fighting and dying for political ideas that they had drawn from the same sources that provided the philosophical basis of the French and American revolutions.

In spite of American example and pressure the Filipinos, however, adapted their borrowings to their own particular situation. They departed from the American model in the direction of greater centralization of power, particularly in the hands of the presidency. The president has great control over the budget and over local government. He can suspend the writ of habeas corpus and place the country under

martial law. In a document which otherwise bears so many resemblances to the American Constitution the Filipinos claim a diffierent underlying poiltical philosophy. As Manuel Quezon put it: "Under our Constitution what is paramount is not individuals; it is the good of the state, not the good of the individual, that must prevail." The state has a social responsibility. The president is expected to do anything that is for the good of the country provided the law does not actually forbid it. The president, the charismatic leader, is expected to act without too nice a consideration of the division of powers, of popular sovereignty, or even of the Bill of Rights. While the status of the individual is stoutly affirmed, it is limited by the absence of trial by jury, by *jus sanguinis* as the basis for citizenship, and by the regalian theory of natural resources. Under the Constitution the state has broad powers to expropriate and transfer land and to limit holdings, to take over businesses on payment of just compensation, to regulate private and public schools, provide free public primary schooling, and guarantee academic freedom in the universities. As a result of historical factors and the structure of Philippine society the Republic is a centralized, not a federal government. The twenty-four senators in the Philippines are elected at large on the grounds, said the framers of the Constitution, that national figures would counteract regionalism. In effect, this provision fitted in well with the traditional centralization of power in Manila and was one of the obstacles that successfully blocked American efforts to bring about decentralization and local autonomy.

It was to be expected that the same characteristics of Philippine society that influenced the framers of the Constitution would have a powerful influence on its practical working and on the administration of law. It was with this in mind that the American "experiment" was designed to be more than a mechanical imposition of foreign institutions on a helpless people. The Constitution and the law were merely one part of a complex educational, social, economic, and political revolution which was designed to make democracy a way of life as well as a political system. The cutting edge of the social and political revolution, in the American view, was a compulsory system of public education. This would make the difference between a literate oligarchy and an educated democracy. It was realized that the success of other measures, such as the separation of Church and State, the constitutional commitment to popular sovereignty, wider participation in the electoral process, and equal access to the courts of law, all depended

in the long run on the success of popular education. It is generally realized that success has been only partial. According to the census of 1948 about sixty per cent of the population above the age of ten could read and write in some language or other. Literary in the English language was thirty-seven per cent and more people could speak English than any other single language. There was no national language. As English was the language of government and of law, some sixty-three per cent of the population was at a disadvantage. Today it is estimated that seventy-two out of one hundred students do not reach the sixth grade, that only five out of one hundred complete high school, and that the quality of education since World War II has probably gone down. The possible consequences of such trends on the administration of the law are serious.

Some of the more unhappy aspects of the Philippine civil service can also be traced to the recent past. The Philippine value system, based as it is on strong kinship ties and a bilateral family organization, does not favor an independent public administrative service based on merit. At a time when only three states of the Union used the merit system, American administrators introduced into the Philippines the most advanced concepts of public administration and made them work by giving them strong administrative backing and by employing Americans in over half the available positions. The policy lasted only to 1913 when the Democrats began the process of Filipinization and rapidly undermined what had been achieved in the first fourteen years. This short period was hardly long enough to change the value system of a people accustomed to believing that political connections were necessary for promotion or appointment and that government service was for personal profit, not public welfare. The concept of honest and efficient administration as an end in itself or as a necessary condition of good government found more support in theory than in practice.

The difficulty is that the new institutions adopted by the Filipinos could not work well without new attitudes, new values, and new knowledge. In a very real sense the Filipinos have now reached a point in their history when they have to choose, to put the matter in oversimplified form, between a political, legal, and economic system which could become modern and democratic and the maintenance of their old social system. They cannot have both.

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