

CHAPTER 1

Historical Overview

Introduction

The Philippines, an archipelago of 7,107 islands (about 2,000 of which are inhabited), with a land area of 115,600 sq m, has a population of 76.5 m. Some 87 major dialects are spoken all over the islands. English and Filipino are the official languages with English as the language of instruction in higher education. According to the 2000 census, the functional literacy rate is 83.8%. Agriculture constitutes the largest single sector of the economy. The country has a total labour force of 64.5%.

The Philippine legal system is aptly described as a blend of customary usage, and Roman (civil law) and Anglo-American (common law) systems. The civil law operates in areas such as family relations, property, succession, contract and criminal law while statutes and principles of common law origin are evident in such areas as constitutional law, procedure, corporation law, negotiable instruments, taxation, insurance, labour relations, banking and currency. In some Southern parts of the islands, Islamic law is observed.

This particular legal system is the result of the immigration of Muslim Malays in the fourteenth century and the subsequent colonization of the islands by Spain and the United States.

Historical Background

Philippine legal history may be categorized according to the various periods in the political history of the country: the pre-Spanish period (pre 1521); the Spanish regime (1521-1898); the Philippine Republic of 1898; the American regime (1898-1935); the Commonwealth era (1935-1946); the Japanese occupation (1941-1944); the Period of the Republic (1946-1972); the Martial Law Period (1972-1986); and the continuation of the Republic.

Pre-Spanish Period

Historians have shown conclusively that the early Filipinos lived in numerous independent communities called *barangays* under various native rules which were largely customary and unwritten. Evidence points to the existence of two codes, namely, the Maragtas Code issued by Datu Sumakwel of Panay Island some time between 1200 and 1212 AD and the Penal Code of Kalantiao issued

by a datu of that name in 1433. however, there are some historians who question the existence of these codes.

These customary laws dealt with subjects such as family relations, inheritance, divorce, usury, partnerships, loans, property rights, barter and sale, and crime and punishment. The penal law distinguished between felonies and misdemeanors, recognized a distinction between principal and accomplice in matters of criminal liability, and had an idea of the existence of qualifying and mitigating circumstances, as well as recidivism as an aggravating circumstance.¹ Like many ancient societies, trial by ordeal was practiced in the *barangay*.

The Spanish Regime

The arrival of Ferdinand Magellan in the Philippines on 16 March 1521 presaged a new era in the history of Philippine law.

Spanish laws and codes were extended to the Philippines either expressly by royal decrees or by implication through the issuance of special laws for the islands. The most prominent of these laws and codes were the *Fuero Juzgo*, *Fuero Real*, *Las Siete Partidas*, *Las Leyes de Toros*, *Nueva Recopilacion de Las Leyes de Indias*, which contained all the laws then in force in the Spanish colonies and the *Novisima Recopilacion*, which comprised all the laws from the fifteenth century up to 1805.²

At the end of Spanish rule in the Philippines, the following codes and special laws were in force in the country: the *Codigo Penal* de 1870 which was extended to the islands in 1887; the *Ley Provisional para la Aplicaciones de las Disposiciones del Codigo Penal en las Islas Filipinas* in 1888; the *Ley de Enjuiciamiento Criminal* (Code of Criminal Procedure of 1872, which was extended in 1888); *Ley de Enjuiciamiento Civil* (Code of Civil Procedure of 1856); *Codigo de Comercio* (Code of Commerce of 1886); *Codigo Civil de 1889* (except the portion relating to marriage); the Marriage Law of 1870; the *Ley Hipotecaria* (Mortgage Law of 1861, which was extended in 1889); the *Ley de Minas* (Mining Law of 1859); the *Ley Notarial de 1862*; the Railway Law of 1877; the Law of Foreigners for Ultramarine Provinces of 1870; and the Code of Military Justice.³

The Philippine Republic of 1898

By 1872, the Filipinos had revolted against Spain because of the abuses committed by the Spanish authorities and friars. The revolution spread so rapidly that on 12 June 1898, the independence of the Philippines was proclaimed by General Emilio Aguinaldo. A Revolutionary Congress was convened on 15 September 1898, and on 20 January 1899, the Malolos Constitution was

¹ T Agoncillo & M Guerrero *History of the Filipino People* (4th edn, 1973) pp 46-7.

² M Gamboa *An Introduction to Philippine Law* (7th edn, 1969) pp 69-70.

³ *Ibid.*, p 71.

approved.⁴ This Constitution proclaimed popular sovereignty and enumerated the fundamental civil and political rights of the individual. At the time of its proclamation, the Republic exercised, albeit briefly, *de facto* authority, although this came to an end upon the coming of the Americans.

The American Era and the Commonwealth

The end of the Spanish-American War, which was followed by the signing of the Treaty of Paris on 10 December 1898, paved the way for the cession of the Philippines to the United States. Upon the establishment of American sovereignty, the political laws of the Philippines were totally abrogated and Spanish laws, customs and rights of property inconsistent with the US Constitution and with American principles and institutions were superseded. The government operated under different organic laws, namely, President MacKinley's Instructions to the Second Philippine Commission on 07 April 1900; the Spooner Amendment of 1901; the Philippine Bill of 1902; the Jones Law of 1916 and the Tydings-MacDuffie Law of 1934.⁵ Pursuant to the Tydings-MacDuffie Law, a Commonwealth government was to be established for a transitional period of ten years before independence could be granted. Likewise, it granted to the Filipinos a right to formulate their own Constitution. In due course, a constitution was approved on 8 February 1935 which was signed by US President Franklin D Roosevelt on 23 March 1935 and ratified at a plebiscite held on 14 May 1935, voters went to the polls to elect the first set of executive and legislative officials led by President Manuel L. Quezon and Vice-President Sergio Osmeña.

The Japanese Occupation

On 08 December 1941, the Philippines was invaded by Japanese forces and was occupied until 1944. during the three-year military rule, a 1943 Constitution was drafted and ratified by a special national convention of the *Kapisanan sa Paglilingkod ng Bagong Pilipinas* (KALIBAPI),⁶ which led to the establishment of the short-lived Japanese-sponsored republic headed by President Jose P Laurel.

During the Japanese occupation, the Commonwealth, then in exile, functioned in Washington DC from 13 May 1942 to 03 October 1944 until its re-establishment in Manila on 28 February 1945 by President Sergio Osmeña.

The Philippine Republic, 1946-1972

The inauguration of the Philippine Republic on 04 July 1946 marked the culmination of the Filipinos' 300 years of struggle for freedom. The 1935 Constitution served as the fundamental law with the executive power being

⁴ T Agoncillo, Malolos *The Crisis of the Republic* (1960) p 306.

⁵ V Sinco *Philippine Political law* (11th edn, 1962) p 85.

⁶ *Agoncillo & Guerrero* p 456.

vested in the President, the legislative power in the bicameral Congress of the Philippines and the judicial power in the Supreme Court and inferior courts established by law.

In the beginning, efforts of the government were geared towards economic rehabilitation and the preservation of peace and order. Due to the widespread agitation for reforms in the legal and political arenas, Congress adopted Resolution of Both Houses (RBH) No 2, as amended by RBH No 4, calling for a Constitutional Convention to propose amendments to the Constitution on 16 March. The resolution was implemented by Republic Act No 6132 and approved on 24 August 1970. Pursuant to its provisions, the election of 320 delegates was held on 10 November 1970.

The Constitutional Convention met on 01 June 1971 and it took its members 17 months to draft a new Constitution. While the Convention was in session, President Ferdinand E Marcos, acting in accordance with the provisions of the 1935 Constitution, placed the entire Philippines under Martial Law.⁷ On 29 November 1972, the Constitutional Convention completed its work. The draft of the new Constitution was submitted to the Filipino people through citizens' assemblies⁸ and was ratified on 17 January 1973.⁹ Proclamation No 1104¹⁰ was issued on the same day declaring the continuation of martial law.

The Martial Law Period

The 1973 Constitution established a parliamentary form of government and introduced the merger of executive and legislative powers. The Chief Executive, the Prime Minister, was elected by a majority of all the members of the National Assembly from amongst themselves¹¹ and could be dismissed by electing a successor Prime Minister.¹² On the other hand, the Prime Minister had the power to advise the President to dissolve the National Assembly and call for a general election.¹³ The President was reduced to being a symbolic head of state.¹⁴

This parliamentary form of government was never implemented. The Transitory Provisions of the 1973 Constitution, which provided for a transition

⁷ Proclamation No 1081, s 1972, 68 OG 7624 (September 1972).

⁸ Created by Presidential Decree No 86 (1972), 69 OG 227 No 2 (08 January 1973).

⁹ Proclamation No 1102, s 197, 69 OG 592 (January 1973). The validity of this proclamation was questioned in five petitions often referred to as *Javellana v Executive Secretary et al* GR Nos L-36164-65, 36142, 36236, and 36283, 31 March 1973, wherein the Supreme Court dismissed the petitions and indicated in the dispositive portion that 'there is no further judicial obstacle to the New Constitution being considered in force and effect.'

¹⁰ 69 OG 592-3 (January 1973).

¹¹ Constitution (1973), art IX, s 3.

¹² Constitution (1973), art VIII, s 13(1)

¹³ Constitution (1973), art VIII, s 13(2).

¹⁴ Constitution (1973), art VIII, s 1.

from the old presidential form of government to a parliamentary system, specifically made the proclamation, decrees and acts of the incumbent President part of the law of the land¹⁵ and at the same time empowered the President to initially convene the interim National Assembly which was never effected.¹⁶ By amendments to the Constitution in October 1976,¹⁷ however, the powers of the incumbent President were maintained and augmented and an *Interim Batasang Pambansa* (interim legislature) was created, having the same powers as a regular legislative body. In Amendment No 3, the powers of the President and Prime Minister were merged in the then incumbent President (Ferdinand E Marcos), who immediately became a member of the *Interim Batasang Pambansa*. Because of these Amendments, he occupied the positions of President and Prime Minister, which arrangement was to last only during the transition period or until the members of the regular legislature 'shall have been elected'. Under Amendment No 6, the President was also empowered to continue to exercise legislative powers until martial law 'shall have been lifted'. If in his judgment, 'there exists a grave emergency or threat or imminence thereof, or whenever the *Interim Batasang Pambansa* or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions which shall form part of the law of the land'.¹⁸

Likewise, Amendment No 7 stipulated the continuance of the *barangays* (smallest political subdivision) and *sanggunians* (councils) and the use of referenda to ascertain the will of the people regarding important matters, whether of national or local interest.

On 07 April 1978, 160 regional representatives apportioned among the 13 regions of the country were elected to the *Interim Batasang Pambansa* while 14 members representing the youth, agriculture, labour and industrial labour sectors were chosen on 27 April 1978. the *Interim Batasang Pambansa* convened on 12 June 1978 with a total membership of 192.

¹⁵ Constitution (1973), art XVII, s 3(2). Various presidential decrees dealt with government reorganization, education, economic development, monetary and financial reforms, development and manpower development and social services.

¹⁶ Constitution (1973), art XVII, s 3(1). The validity of the President's refusal to convene the Interim National Assembly and his power to promulgate proclamations, orders and decrees during the Martial Law Period were some of the issues raised in *Aquino v Commission on Elections* GR No 40004, 31 January 1975, 62 SCRA 275 (1975). The Supreme Court affirmed the power of the President to issue decrees and orders and held that the New Constitution gave the President the discretion as to when to convene the Interim National Assembly.

¹⁷ On 16-17 October, the people, in a Referendum Plebiscite, ratified the Amendments to the 1973 Constitution which took effect on 27 October 1976 under Proclamation No 1595 (1976), 76 OG 4095 (June 1980).

¹⁸ The validity of Amendment No 6 was questioned and sustained by the Supreme Court in *Legaspi v Minister of Finance* GR No L-58289, 24 July 1982, 115 SCRA 418 (1982).

The 1973 Constitution was subsequently amended in 1980¹⁹ and 1981.²⁰ The 1980 Amendments increased the retirement age of Supreme Court judges from 65 to 70 years. The 1981 Amendments introduced a modified form of presidential/parliamentary system. The President, who was the head of state and chief executive of the Republic, was directly elected by the people for a term of six years.²¹ There was a Prime Minister who was elected by a majority of the *Batasang Pambansa* upon nomination of the President.²² He was head of the Cabinet and had supervision of all ministries.²³ Together with the Cabinet, he was responsible to the *Batasang Pambansa* for the programme of the government, approved by the President.²⁴ The *Batasan* could withdraw its confidence from the Prime Minister and the latter could seek a popular vote of confidence on fundamental issues and request the President to dissolve the legislature.²⁵ There was also an Executive Committee designated by the President, composed of the Prime Minister as Chairman and not more than 14 members, at least half of whom were members of the *Batasang Pambansa*.²⁶ It was charged with assisting the President in the exercise of his powers and functions and in the performance of his duties. The other 1981 Amendments included the composition of the *Batasang Pambansa*; the qualification of its members; their term of office and the setting up of the first regular elections in 1984; electoral reforms on the accreditation of political parties and change of political party affiliation; and the provision that a natural-born citizen of the Philippines who had lost his Philippine citizenship could be a transferee of private land for residential purposes. According to one constitutionalist, although the 1973 Constitution classified governmental powers into the three areas of the executive, legislative, and judiciary, the separation of powers and its corollary rule of non-delegation of power were neither well-defined nor strictly observed.²⁷

Martial Law was lifted on 17 January 1981, and military tribunals were abolished by Proclamation No 2045.²⁸

A presidential election was held on 16 June 1981 and President Marcos was again re-elected. In his inaugural address on 30 June 1981, he proclaimed the birth of the Fourth Republic under the New Constitution, as amended.

¹⁹ See art X, s 7 wherein the retirement age of members of the Supreme Court and judges of inferior courts was changed from 65 years to 70 years of age. This was ratified in a plebiscite held on 30 January 1980 and its results announced in Proclamation No 1959.

²⁰ The plebiscite was held and ratified on 07 April 1981, the result of which was announced in Proclamation No 2077 (1981).

²¹ Constitution (1973), art VII, ss 1 & 3.

²² Constitution (1973), art IX, s 1, para 2.

²³ Constitution (1973), art IX, s 10.

²⁴ Constitution (1973), art IX, s 2.

²⁵ Constitution (1973), art VIII, s 13.

²⁶ Constitution (1973), art IX, s 3.

²⁷ IR Cortes *Philippine Administrative Law: Cases and Materials* (2nd rev edn, 1984) p 26.

²⁸ 77 OG 441 (January 1981).

The assassination of former Senator Benigno S Aquino, on 21 August 1983, triggered mass demonstrations and an economic crisis which paved the way to another set of amendments to the 1973 Constitution.²⁹ The 1984 Amendments consisted of the following:

- (1) the establishment of a different mode of presidential succession with the creation of the Office of the Vice-President and the abolition of the Executive Committee;
- (2) the apportionment of representation in the *Batasang Pambansa* by province, city, and by districts in Metropolitan Manila, instead of by region;
- (3) the grant, as an additional mode for the acquisition of public lands and that the agrarian reform programme may include the grant or distribution of alienable public lands to qualified tenants, farmers and other landless citizens; and
- (4) making the State undertake an urban land reform and social housing programme for the homeless, landless, and the low-income resident citizens.

On 14 May 1984, elections were held for the 183 elective seats in the 200-member *Batasang Pambansa*. The legislature convened on 23 July 1984.

An impeachment resolution was filed by 57 members of the opposition against President Marcos but this was dismissed by the *Batasan* Committee on Justice for not being sufficient in form and substance to warrant further consideration.

On 03 November 1985, President Marcos announced the calling of a special presidential election and for which the *Batasang Pambansa* set 7 February 1986 as the date of the so-called 'snap election'. Corazon C Aquino and Salvador H Laurel as presidential and vice-presidential candidates were pitted against President Marcos and Arturo M Tolentino. The election on 7 February emerged as the most anomalous poll ever held in the country with widespread incidents of stuffed ballots, election returns snatchings, harassments, mauling, and vote-buying with 10% of Metropolitan Manila voters being disenfranchised. Despite an awakened and vigilant citizenry working through the NAMFREL (National Movement for Free Elections), whose count gave Aquino a wide lead of one million, the *Batasang Pambansa* declared Marcos and Tolentino to be the winners. Subsequent events led to an Armed Forces mutiny and the four-day 'people-power revolution', which resulted in the ousting of President Marcos from the Philippines on 25 February 1986.

²⁹ The Plebiscite was held on 27 January 1984 pursuant to *Batas Pambansa Blg 643* (1984), 80 OG 4732 No 36 (03 September 1984).

The Continuation of the Republic

When Corazon C Aquino took her oath of office as President on 25 February 1986, Proclamation No 1³⁰ was issued wherein she declared that she and her Vice-President were 'taking power in the name and by the will of the Filipino people' on the basis of the clear sovereign will of the people expressed in the election of 07 February 1986.³¹ The new government came into power not in accordance with the procedure outlined in the 1973 Constitution but as explicitly stated in the preamble to Proclamation No 3 which stated that 'the new government was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines' and that this 'heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended'. The Provisional Constitution,³² otherwise known as the Freedom Constitution, adopted *in toto* the provisions of Article I (National Territory), Article III (Citizenship), Article IV (Bill of Rights), Article V (Duties and Obligations of Citizens), and Article VI (Suffrage) of the 1973 Constitution, as amended. Other provisions, such as Article II (Declaration of Principles and State Policies), Article VII (The President), Article X (The Judiciary), Article XI (Local Governments), Article XII (The Constitutional Commission), Article XIII (Accountability of Public Officers), Article XIV (The National Economy and Patrimony of the Nation), and Article XV (General Provisions) were adopted insofar as they were not inconsistent with the provisions of the Proclamation, while Articles VIII, IX, XVI and XVII were deemed to be superseded.³³

Under the Provisional Commission, all existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances, not inconsistent with this Proclamation, were to remain operative until amended, modified or repealed by the President or the regular legislative body to be established under a new Constitution.³⁴ The President continued to exercise legislative power.³⁵

Pursuant to Article V of the Provisional Constitution, the Constitutional Commission was constituted under Proclamation No 9³⁶ composed of 48 members with the task of drafting a Constitution in 'as short a period as may be

³⁰ 82 OG 1236 (03 March 1986).

³¹ The legitimacy of the Aquino government was questioned in *Lawyers' League for a Better Philippines v Aquino* and other cases, GR Nos 73748, 73972 and 73990, 22 May 1986 where the Supreme Court dismissed in a resolution because 'the legitimacy of the Aquino government is not a justiciable matter of which the people of the Philippines are the judge. And the people have made the judgment. They have accepted the government of President Corazon C Aquino which is in effective control of the entire country so that it is not merely a *de facto* government but is in fact a law *a de jure* government'.

³² Proclamation No 3, dated 25 March 1986, 82 OG 1567 (31 March 1986).

³³ Article I, ss 1-3.

³⁴ Article IV, s 1.

³⁵ Article II, s 1.

³⁶ Dated 23 April 1986, 82 OG 1887 (28 April 1986).

consistent with the need to hasten the return of normal constitutional government'.³⁷ After 133 days of work by a vote of 45 to 2, the proposed new Constitution, consisting of a preamble, 18 articles and 321 sections, was submitted to the President on 15 October 1986. It was ratified by the people in a plebiscite held on 02 February 1987. By its very nature, the Provisional Constitution as well as the revolutionary government which operated it, self-destructed upon the ratification and effectivity of the New Constitution since the incumbent President and Vice-President elected in the 07 February 1986 electoral exercise were provided a six-year term of office until 30 June 1992 under the Transitory Provisions.³⁸ The Congressional elections were scheduled to be held on 11 May 1987.³⁹ The incumbent President continued to exercise legislative powers until the first Congress was set to be convened. Despite several coups, President Aquino completed her term under the 1987 Constitution. Elections were held on 11 May 1992 and Fidel V Ramos was elected President.

He was succeeded by Joseph Ejercito Estrada after the 11 May 1998 elections. In view of the exposé of Governor Luis Singson, the Senate opened the impeachment trial of President Estrada on 20 November 2000. As a result of the 11-10 vote by the Senator-judges against the opening of the second envelope which contained evidence, there was spontaneous outburst of anger that hit the streets wherein public prosecutors withdrew their appearances followed by other public officers from the Cabinet. These actions and 'people power' held to his resignation.⁴⁰ President Gloria M Arroyo took her oath as President on 20 January 2001 and was reelected on 11 May 2004.

³⁷ Section 2 of Proclamation No 9, 1986.

³⁸ Constitution (1987), art XVIII, s 5.

³⁹ Executive Order No 134, dated 27 February 1987, 83 OG 788 (March 1987).

⁴⁰ *Cf* Estrada v Disierto, GR Nos 146710-15, 146738, 02 March 2001, 353 SCRA 452 (2001).