

THE COLONIAL ROOTS OF CRIMINAL PROCEDURE IN THE PHILIPPINES

AMY ROSSABI*

I. INTRODUCTION

Centuries of colonial rule profoundly influenced Filipino social, political, and legal institutions. Filipino law, in particular, evolved as a synthesis of indigenous, Spanish (Roman), and American common laws, each building on its forerunner to create a system unique to the Philippines. As a succession of alien powers colonized the Philippines, they preserved some of the existing laws, altering only those in conflict with their own and adding a few to encompass new commercial, political, or religious conditions. When the Spanish established a colonial government in 1565, they initially permitted the native inhabitants to continue with many of their indigenous customs instead of imposing their own traditions derived from the Roman legal code. As they became more entrenched, however, the Spanish attempted to subvert many of the customary laws. American officials, who displaced the Spanish in 1898, generally adopted the same policy by incorporating certain features of Roman law while simultaneously tolerating some of the remaining native legal traditions.

The Americans thus drew on much of the existing substantive law but also found that the Spanish had failed to introduce laws of procedure to the archipelago. Moreover, the few procedural measures that the Spanish brought with them appeared to be inconsistent with American concepts of justice. Within two years of their arrival, U.S. colonial officials issued General Orders No. 58, which instituted a code of criminal procedure that was more consonant with American legal ideals. The code of criminal procedure the American colonials introduced in 1900, remains virtually unchanged in 1997 and governs present-day criminal procedure in the Philippines. Thus procedural reforms of the colonial past had a tremendous impact on the current Filipino legal system.

* Attorney, Davis Polk & Wardwell; B.A. (Southeast Asian History), Cornell University; J.D., M.A. (Southeast Asian History), University of Wisconsin. The author wishes to thank Professors Alfred W. McCoy and Morris Rossabi for their endless patience and assistance in editing this article.

When they drafted and implemented such legal documents as General Orders No. 58 in the early twentieth century, American colonials enlisted the aid of the Filipino educated elite, the *ilustrados*. Throughout their tenure in the Philippines, American officials employed the assistance of the *ilustrados* to legitimize their rule. This collaboration enabled the American officials to govern the archipelago through educated intermediaries and freed them from direct administration of the lower-class Filipinos.¹

Although many of the rights Americans offered the Filipinos were similar to those guaranteed to U.S. citizens under the Constitution, the colonial regime never formally extended civil rights to the inhabitants of the Islands. Most importantly, during the American occupation, the Filipinos never had the right to a trial by jury, a cornerstone of American democratic values.

Seeking to avert any possible threat to their control of the Philippines, the American colonials elected not to include jury trials in General Orders No. 58. They feared that giving the ordinary Filipino a determinative role in the judicial system might pose a challenge to their authority. To justify this decision, the colonial regime reasoned that since the Filipinos had never had jury trials, the Americans were not depriving them of a right which they had once enjoyed. American officials also asserted that the majority of Filipinos did not possess the intellectual capacity or cultural sophistication to judge their peers competently, exhibiting the Orientalist attitude prevalent in many colonials throughout Asia.²

Most Europeans who came to Asia in the nineteenth century carried with them the so-called “white man’s burden” and a duty to civilize but not associate with the natives. Assuming the natives were not capable of living under Western laws, colonials often limited indigenous access to their own legal systems, sometimes administering their colonies under a “dual legal structure,”³ with one set of laws for the foreigners and one for the native inhabitants. When Dutch traders established the Dutch East Indies Trading Company in 1602, they conducted their transactions according to Dutch laws rather than abiding by the native *adat* customs. Within a few years,

1. GLENN ANTHONY MAY, *SOCIAL ENGINEERING IN THE PHILIPPINES: THE AIMS, EXECUTION AND IMPACT OF AMERICAN COLONIAL POLICY, 1900-1913*, 9-10 (1980).

2. PETER GORDON GOWING, *MANDATE IN MOROLAND: THE AMERICAN GOVERNMENT OF MUSLIM FILIPINOS 1899-1920*, 45 (1977).

3. C. Fasseur, *Colonial Dilemma: Van Vollenhoven and the Struggle Between Adat and Western Law in Indonesia*, in *EUROPEAN EXPANSION AND LAW: THE ENCOUNTER OF EUROPEAN AND INDIGENOUS LAW IN THE 19TH AND 20TH CENTURY AFRICA AND ASIA* 237 (W.J. Mommsen & J.A. De Moor, eds., 1992) [hereinafter *EUROPEAN EXPANSION AND LAW*].

separate courts were established for the Dutch community so that a quite autonomous 'European' legal system quickly grew up beside the one(s) indigenous to the islands. From the very beginning of Dutch contact therefore, Western law and local customary law were seen as distinct entities serving separate clientele — the one foreign and European, and the other indigenous Asian.⁴

Daniel S. Lev, a scholar of Indonesian law, wrote that these segregated legal systems facilitated efficient exploitation of the indigenous peoples.⁵ In the process of exploiting the natives, Dutch, American, and British colonists, who imposed a similar segregated legal and political system in Malaysia,⁶ often refused the natives their basic civil rights.

However, because establishment of a colony is inconsistent with American democratic values,⁷ American officials attempted to justify their occupation of the Philippines, asserting that they would not follow the path of traditional European imperialism. They claimed they would not exploit the Philippines for their own economic gain⁸ as had the Dutch in Indonesia or the British in Malaysia. Instead, they would remain in the Philippines only long enough to instruct the natives in civilized rule and democratic law⁹ because they assumed that without American guidance the Philippine Islands would fall into "widespread anarchy."¹⁰

Thus, the Americans introduced changes, facilitated by the *ilustrados*, characterized primarily by procedural rather than substantive laws. They instituted General Orders No. 58, in part to demonstrate to the Filipinos that the rights of the accused were paramount in a just and democratic society. However, their decision not to implement a procedural system which included jury trials exemplifies colonial attitudes in the nineteenth

4. SUDARGO GAUTAMA AND ROBERT N. HORNICK, *AN INTRODUCTION TO INDONESIAN LAW: UNITY IN DIVERSITY* 2 (1974).

5. Daniel S. Lev, *Colonial Law and the Genesis of the Indonesian State*, 40 *INDONESIA* 60 (1985).

6. JOHN G. BUTCHER, *THE BRITISH IN MALAYA 1800-1941: THE SOCIAL HISTORY OF A EUROPEAN COMMUNITY IN COLONIAL SOUTH-EAST ASIA* 97-120 (1979).

7. D.K. FIELDHOUSE, *COLONIALISM 1870-1945: AN INTRODUCTION* 48 (1981).

8. U.S. BUREAU OF INSULAR AFFAIRS, *REPORTS ON THE LAW OF THE CIVIL GOVERNMENT IN TERRITORY SUBJECT TO MILITARY OCCUPATION BY THE MILITARY FORCES OF THE UNITED STATES* 11 (1902) [hereinafter *LAW OF THE CIVIL GOVERNMENT*].

9. Michael Cullinane, *Ilustrado Politics: The Response of the Filipino Educated Elite to American Colonial Rule, 1899-1907* 75 (1989) (Ph.D. dissertation, University of Michigan).

10. FIELDHOUSE, *supra* note 7, at 48.

and early twentieth centuries and a desire to retain power in the hands of the elite, ideas inconsistent with true democracy.

II. THE SPANISH ERA (1521-1898)

The arrival of the Spanish ushered in an era of foreign rule and an introduction of non-indigenous legal institutions to the Philippine Islands. Fernao de Magellan, a Portuguese navigator employed by the Spanish, reached the Philippines in 1521, though the Spanish did not truly dominate the Islands and establish a colonial government until after 1565. Two main groups of Spaniards arrived in the Archipelago during the next two centuries: Catholic missionaries who hoped to convert the Filipinos and colonial administrators who sought economic gain. Forced to reach a compromise that reconciled their conflicting interests, religion and profit, the Spanish government built an empire around "the inseparable union of the Church and the state."¹¹ These dual objectives shaped the policies of the colonial administration.

A. Roman Law in the Philippines¹²

Using the modified Roman laws as a model, the Spanish crown enacted the *Recopilación de las Leyes de los Reyes de las Indias*, or the Law of the Indies, on May 18, 1680. This code consisted of *cédulas* or collections of orders carried out in the name of the king;¹³ *decretos* or orders concerning the church carried out in the name of the king;¹⁴ *resoluciones* or "orders rendered by some superior authority on questions duly submitted, and thereafter sent to the inferior authorities for their guidance;"¹⁵ *reglamentos* or written instructions from the central

11. JOHN LEDDY PHELAN, *THE HISPANIZATION OF THE PHILIPPINES: SPANISH AIMS AND FILIPINO RESPONSES, 1565-1700* 64 (1959).

12. The Spanish officials introduced a legal system based upon their own adaptation of Roman law. As modified by the Emperor Justinian in the sixth century, this Roman Code became dominant throughout Western Europe, except in the British Isles which had its own traditions of Common Law. Modern law and the Napoleonic Code have, in essence, replaced Roman law in Europe but at the time of the Spanish conquest of the Philippines, the Roman Code was still the dominant legal system.

13. 4 LIBRO SEGUNDO, TÍTULO PRIMERO DE LAS LEYES, PROVISIONES, CÉDULAS, Y ORDENANZAS REALES, 126-132, 186-187 [hereinafter LEYES, PROVISIONES, CÉDULAS, Y ORDENANZAS REALES].

14. Note the lack of separation of church and state.

15. CHARLES BURKE ELLIOTT, *THE PHILIPPINES TO THE END OF THE MILITARY REGIME: AMERICA OVERSEAS* 233 (1917).

government; and *ordenamientos*¹⁶ and *pragmáticas*,¹⁷ both orders from the king relating to matters not covered in the *cédulas*.¹⁸ Though these documents did not constitute a cohesive and comprehensive code of laws, they contained many of the regulations that governed the Philippines in the first years of Spanish rule.

In hopes of averting native resistance, the colonial government permitted the Filipinos to retain their "pagan" laws as long as they did not blatantly conflict with Spanish traditions, a practice which the Americans continued in their years of rule. John Phelan, an historian of the Philippines, wrote of the Spanish period that "dowry and inheritance . . . received recognition in the Spanish law courts as customary law in all inter-Filipino litigations. The Spaniards did not object to the pre-Hispanic tradition of the groom providing the dowry, although this custom differed from Spanish usage."¹⁹ In general, however, the Spanish version of Roman law replaced many indigenous regulations. For legal matters not covered in the Law of the Indies, the authorities turned to the Code of Castile (the *Fuero Juzgo*, *Fuero Real*, and *Siete Partidas of Alfonso X*, all written prior to 1266 A.D.) or the later *Novísima Recopilación de Castilla*, imposing still another set of laws on the Filipinos and requiring lawyers to master additional codes. As one legal historian explains, "the Filipino lawyer whose case was not determined by the Laws of the Indies or any statute subsequently passed for or extended to the islands found himself thrown back on the ancient Spanish Codes."²⁰

B. Spanish Courts in the Philippines

In addition to bringing Roman laws to the Philippines, the Spanish rulers also introduced a new court system. The *gobernadorcillo*, or village leader, a Filipino, who could often mediate and resolve conflicts on the local level without resorting to more formal proceedings, had jurisdiction over civil cases and petty criminal disputes. He could also settle questions about land boundaries and ownership. If the parties wished to appeal his decisions, they took their case to the next rung of the bureaucracy, presenting their arguments before the Spanish *alcaldes mayores*. The *alcaldes mayores* also presided over all initial criminal cases and civil suits

16. LEYES, PROVISIONES, CÉDULAS, Y ORDENANZAS REALES, *supra* note 13, at 282.

17. *Id.* at 297.

18. ELLIOTT, *supra* note 15, at 233.

19. PHELAN, *supra* note 11, at 64.

20. ELLIOTT, *supra* note 15, at 233.

involving substantial sums. Their decisions could, in turn, be appealed to the *Audiencia Territorial de Manila* ("Audiencia"),²¹ the Supreme Court of Manila.²²

First formed in 1584, the *Audiencia* remained as the highest court in the Philippines for most of the period of Spanish rule.²³ The body "was composed of one chief justice, two presidents of chambers (civil and criminal branches), eight associate justices, additional justices for vacancies (*magistrados suplentes*), and [an] attorney-general and other officials."²⁴ The *Audiencia* reviewed all criminal cases, whether appealed or not, with the power to overrule any of the lower courts' decisions and all civil cases that were appealed.²⁵ Presiding over the *Audiencia*, the Governor-General had the final say in all criminal cases and civil cases on appeal in the Philippines, combining the executive and the judicial branches of the government.²⁶ As the Spanish system of justice in the Philippines became more dominant, Spanish officials separated the *Audiencia* into two branches, one for civil cases and the other for criminal cases. Each branch had separate justices²⁷ headed by a President.²⁸

The last appellant body was the Council of the Indies in Spain. However, disputes among Filipinos rarely reached the Council, as the colonial government tried to dissuade the natives from wasting their time and money on what the Spanish generally thought to be minor disagreements.²⁹

By the middle of the nineteenth century, the Spanish colonial government had enacted numerous laws regulating everything from mining

21. PHELAN, *supra* note 11, at 129.

22. MARIANO A. ALBERT, LA LEY PROCEDIMIENTO CRIMINAL 13 (1927).

23. Spanish officials briefly abolished the *Audiencia* in 1589 but then reinstated it in 1596.

24. GEORGE A. MALCOLM, THE GOVERNMENT OF THE PHILIPPINE ISLANDS: ITS DEVELOPMENT AND FUNDAMENTALS 74 (1916).

25. David Cecil Johnson, *Courts in the Philippines, Old--New*, 14 MICH. L. REV. 300, 318 (1916).

26. PETER W. STANLEY, A NATION IN THE MAKING: THE PHILIPPINES AND THE UNITED STATES, 1899-1921 20 (1974).

27. U.S. PHILIPPINE COMMISSION, REPORT OF THE TAFT COMMISSION, FIRST MESSAGE TO THE PRESIDENT OF THE UNITED STATES 122 (1900) [hereinafter REPORT OF THE PHILIPPINE COMMISSION].

28. ELIODORO G. ROBLES, THE PHILIPPINES IN THE NINETEENTH CENTURY 195 (1969).

29. One of the few cases to reach the Council of the Indies in Madrid involved a dispute between a member of the Chinese mestizo elite and the Spanish Catholic Church in Cebu. This case tied up the Philippine court systems for more than twenty years before it reached the Council of the Indies. The appeal ended in 1850 when the Spanish justices found for the Cebu clergymen and "brought a crushing legal defeat upon the mestizo community." Michael Cullinane, *The Changing Nature of the Cebu Urban Elite in the 19th Century*, in PHILIPPINE SOCIAL HISTORY: GLOBAL TRADE AND LOCAL TRANSFORMATIONS 262 (Alfred W. McCoy & Ed C. de Jesus, eds., 1982).

and commerce to military justice and foreign water rights, hoping through its legal system to create a prosperous Catholic colony. Although the early colonialists attempted to preserve native legal customs, by 1887, Spanish traditions had replaced almost all of the indigenous practices.³⁰ George A. Malcolm, a Professor of Law at the University of the Philippines in the early twentieth century, praised these laws, writing that the Spanish system was "by far the most valuable monument of legislation, not merely of Spain but of Europe, since the publication of the Roman (Justinian) Code."³¹ The culmination of these Spanish laws was the Penal Code of 1887, enacted on the eve of the Spanish withdrawal from the Philippines.

C. Criminal Law and Procedure

Beginning with a section defining a crime, the Penal Code of 1887 is primarily a list of crimes and the corresponding punishments for each.³² It provides no guidance for trial procedures nor does it offer the defendant any legal rights. In his report to President William McKinley in 1900, William Howard Taft, a member of the Philippine Commission, devoted a short section to criminal law and procedure during the Spanish regime. He wrote that:

a code of criminal procedure did never exist in the Philippines, not even an arranged compilation of lawful provisions relating to criminal procedure. There were only scattered provisions in the form of laws, royal "cedulas," royal orders, and *autos acordados* Although there was no systematic law or complete body of laws in reference to criminal procedure, still a constant and uniform practice existed in all provinces throughout the islands.³³

The "practice" included trials in front of a justice appointed and under the supervision of the Governor-General. The Spanish never implemented a system of jury trials in their tenure of the Philippines but instead permitted a judge to render all decisions.³⁴

30. STANLEY, *supra* note 26, at 20.

31. MALCOLM, *supra* note 24, at 56.

32. U.S. DIVISION OF CUSTOMS AND INSULAR AFFAIRS, TRANSLATION OF THE PENAL CODE IN FORCE IN THE PHILIPPINES 9-22 (1900).

33. REPORT OF THE PHILIPPINE COMMISSION, *supra* note 27, at 237.

34. Lebbeus R. Wilfley, *Trial by Jury and "Double Jeopardy" in the Philippines*, 13 YALE L.J. 421, 423 (1904).

A criminal trial in the Spanish colonial Philippines began when the accusing party filed a complaint, which often included two completely different crimes committed by two distinct individuals in separate locations. The underlying assumption was that the alleged criminals were related. After the prosecution filed the complaint with the lower court, a period known as the *sumario* began.

The lawyers conducted the *sumario* in the absence of the defendant.³⁵ Equivalent to a period of discovery in the United States, the *sumario* was, in effect, a period when each side investigated and researched its case. In his study of the Philippines, James LeRoy, defined it as the "summary procedure preliminary to [the defendant's] arraignment on a formal charge."³⁶ The *sumario* often extended over a period of years, with the defendant spending the time in prison, for the Spanish had no system of bail in cases that had a penalty of *presidio correccional*, or a time greater than six months.³⁷ Although the *sumario* was in some ways similar to discovery, American criminal procedure mandates that counsel advise the defendant of all the proceedings and that the lawyers conduct the discovery as expeditiously as possible--a sharp distinction from the Spanish-imposed arrangement in the Philippines.

Following *sumario*, the trial began. At this time the parties advised the defendant of the charges against him. Once cognizant of the allegations, the accused was required to offer evidence regarding the crime with which he was charged. If he remained silent, the court interpreted this to mean that he was guilty and he was charged formally.³⁸ In theory, he had the right to force the prosecution to show him all the evidence supporting the charges, but in practice this scarcely happened.³⁹ In fact, Spanish laws permitted the defendant no civil rights but forced him to appear in court while the prosecution presented its case against him, with the burden of proof and production of evidence on the defendant.⁴⁰ The state and elite interests predominated over individual rights.

35. DEAN C. WORCESTER, *THE PHILIPPINES: PAST AND PRESENT* 326 (1930).

36. JAMES LEROY, 1 *THE AMERICANS IN THE PHILIPPINES* 108 (1914).

37. *Id.*

38. F.C. Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 41 (1932).

39. WORCESTER, *supra* note 35, at 327.

40. W.F. Norris, *The Criminal Code of the Philippines*, in 15 *THE GREEN BAG* 433 (1903).

D. *The Spanish Catholic Church in the Philippines*

Spanish authorities integrated the Catholic Church into their system of government and legal codes.⁴¹ Spanish law, for example, gave the parish priests the right to suggest candidates for the *juez de paz* as well as access to the municipal court. The Archbishop of Manila had the right to sit on the administrative council, and church officials often performed political functions. In addition, the most powerful man in the Philippine government, the Governor-General, frequently meddled in church affairs.

The Catholic Church often played a significant role in the Spanish colonial administration. The clergy frequently served as a link between the Filipino people and the colonial administration, so that the Filipinos did not feel isolated from the government.⁴² The Spanish government depended on the clergy to "control and in large part administer its colony."⁴³ Parish priests or friars at the local level sometimes arbitrated moral and civic disputes. Thus, the bureaucracy and the Church were interconnected for much of the Spanish colonial regime,⁴⁴ and as Robles wrote, "for all purposes, the Church from 1861 to the close of the century was part of the government proper."⁴⁵ Such unity prevented the Spanish regime from cooperating with the *ilustrados*, the educated elite of the Philippines, because, as we shall note, the *ilustrados* sought the separation of church and state.

E. *The End of the Spanish Era*

By the 1880's, many young Filipinos had perceived that both the Spanish colonial regime and the Catholic Church had spent much of the past three hundred years depriving the Filipinos of basic economic, political, and legal rights. From their perspective, the Spanish colonists had exploited the indigenous people for their own economic and religious gain. In opposition to this perceived oppression, a number of Filipinos followed the lead of the reform-minded Filipino intellectual elite, the *ilustrados*, who initiated a nationalist movement.

41. ROBLES, *supra* note 28, at 195.

42. MARCELO H. DEL PILAR, MONASTIC SUPREMACY IN THE PHILIPPINES 14 (Encanacion Alozosa trans. 1958).

43. JOHN N. SCHUMACHER, THE PROPAGANDA MOVEMENT, 1880-1895 I (1973).

44. Andre Lebon, *A Conflict of Race: Americans and Filipinos*, in FROM REVOLUTION TO A SECOND COLONIZATION: THE PHILIPPINES UNDER SPAIN AND THE UNITED STATES 22-25 (Marietta Enriquez Guerrero trans., 1990).

45. ROBLES, *supra* note 28, at 195.

Some of the *ilustrados* had traveled to Spain to receive what they assumed to be a superior education unavailable to them in the Philippines.⁴⁶ During their time abroad, they studied European philosophy, particularly the views stemming from the Enlightenment.⁴⁷ Many became active in the "propaganda movement," criticizing the Spanish colonial regime in the Philippines and urging the colonials to reform their policies.⁴⁸ These *ilustrados* called for "individual rights, liberties and guarantees of person, property and domicile, with freedom of worship and complete separation of church and state,"⁴⁹ principles which paralleled later American ideals. In 1888, a group of *ilustrados*, the "*Asociación Hispano-Filipina*," proposed a series of laws that would address such issues. The *Asociación* planned: "to work for (1) the reforms in the judiciary and the penitentiary, (2) the development of Philippine agriculture, (3) the construction of roads, (4) reforms in the governmental administration, (5) the compulsory teaching of the Spanish language in schools, and (6) the establishment of secondary schools."⁵⁰ Although the *ilustrados* did not attempt to overthrow the Spanish regime, the colonials moved to crush the Filipino nationalists, who posed a threat to the colonial administration.

Yet, in order to deflect and diffuse some of the *ilustrados'* criticism, the Spanish colonials attempted to reform part of the legal system. In 1890 and 1891, less than ten years before the Americans arrived in the Philippines, the Spanish rulers overhauled the system of justice. By royal decree, the government declared that each town must have a *juez de paz* or a justice of the peace. Given powers to hear and offer judgments in civil cases involving less than two hundred dollars and in preliminary criminal cases, the *juez de paz* resolved minor disputes, often concerning property or inheritance rights.⁵¹ The *juez de paz* adopted most of the *gobernadorcillo's* judicial duties, permitting the *gobernadorcillo* to focus exclusively on his administrative functions.⁵² In its reforms, the colonial

46. Although some *ilustrados* studied abroad, to be considered an *ilustrado* a person only need be educated in Western culture and intellect and be fluent in Spanish not necessarily schooled outside the Philippines. Cullinane, *supra* note 9, at 39-42.

47. BONIFACIO SALAMANCA, *THE FILIPINO REACTION TO AMERICAN RULE, 1901-1913* 23 (1968).

48. SCHUMACHER, *supra* note 43, at 15-16.

49. MAY, *supra* note 1, at 28.

50. DEL PILAR, *supra* note 42, at 6; *see also* SCHUMACHER, *supra* note 43, at 164.

51. MAY, *supra* note 1, at 57.

52. George R. Harvey, *The Administration of Justice in the Philippine Islands*, 9 *ILL. L. REV.* 73, 77 (1914).

government also shifted the power of supervising the courts away from the *alcaldes mayores* and turned it over to the civil governor, an attempt to create a more centralized system of justice that would deflect some Filipino resentment.⁵³

Even with these reforms, the Spanish judicial system was still inefficient. First, an individual could object to the judge and initiate action against him at any point in the proceedings. The entire trial then had to be moved to another court, presided over by a new justice, but no decision could be rendered on the main issue until the problems with the first judge had been resolved, thus greatly lengthening the trial process.⁵⁴ Second, the *Audiencia* continued to review every criminal trial and all civil cases that ended in acquittal. Finally, Spanish justices would often listen to the testimony of one witness for an hour or so and then adjourn for a week or more before hearing from the next witness.⁵⁵ Such delays and procedural difficulties angered many Filipinos and contributed to unrest in the late nineteenth century.

III. THE AMERICAN ERA

By the late 1890's, Philippine resistance to the Spanish had gained such strength that by August of 1898 the revolutionaries controlled most of the archipelago, with the exception of the city of Manila. The United States, which sought to become a power in the Pacific, supported the Filipinos, and became embroiled in the Spanish-American War, partly to gain influence over the Philippines, and other non-Pacific Spanish colonies. The Spanish colonial powers were weak and were compelled to submit to American forces after an extremely brief war.

Direct United States involvement in Philippine government and law stemmed from the aftermath of the Spanish-American War. The Spanish ceded the Philippines, Puerto Rico and Cuba to the United States under the Treaty of Paris signed in December of 1898. Ratified by the U.S. Congress shortly thereafter, the Treaty initiated an era of what the American government termed "benevolent assimilation"⁵⁶ for the Philippines. This phrase, which justified virtual annexation of the Philippines, implied that American rule would differ from governance by the European imperialists.

53. *Id.* at 78.

54. WORCESTER, *supra* note 35, at 325.

55. Arthur F. Odlin, American Courts in the Philippines, Address delivered before the Florida State Bar Association (1912), in 47 AM. L. REV. 321, 328 (1913).

56. LEROY, *supra* note 36, at 399-403.

Asserting that their motive in the Philippines was to teach and civilize the natives,⁵⁷ the Americans disclaimed any colonial intentions. According to D.K. Fieldhouse, a scholar of colonial theory, "colonialism means exploitation by the foreign society and its agents who occupied the dependency to serve their own interests, not that of the subjected people."⁵⁸ Initially, Americans did not enter the Archipelago for their own economic or religious gains, as the Spanish had, and therefore, in their eyes, did not colonize the Philippines, but rather "adopted" the country under what Fieldhouse termed a "trusteeship." He wrote that a "trusteeship implies that the empire entailed a moral responsibility for the welfare and evolution of the dependencies so that policy must be formulated with their interests in the forefront."⁵⁹

Unfamiliar with Filipino culture and society when they arrived, the Americans relied on the *ilustrado* elite to help define their colonial policy and to persuade other Filipinos that American rule was in their best interests. Believing that conceding to American rule would offer them privileges they had not known during the Spanish regime, many *ilustrados* cooperated with American officials in the Philippines and "the Americans ultimately pacified the country, by winning over the elites of wealth and education."⁶⁰

With American control came U.S. law, which was an Anglican or Common Law system adopted from the British. Changing periodically to reflect new social developments, this law has its basis in a court system of jury trials, permitting an accused to be judged by a group of his peers, rather than one lone justice. When the Philippines came under American jurisdiction, the colonial administration promoted a gradual shift from Roman law and indigenous practices towards Common Law, while permitting certain aspects of Roman law and indigenous traditions to continue. Though American colonial rulers mandated the use of many elements of the Common Law, they never introduced a system of jury trials. Instead they focused on separating church and state and imposing codes of procedure in the Archipelago.

57. Cullinane, *supra* note 9, at 75.

58. FIELDHOUSE, *supra* note 7, at 7.

59. *Id.* at 27.

60. DAVID WURFEL, *FILIPINO POLITICS: DEVELOPMENT AND DECAY* 7 (1988).

A. *Military Rule — The Schurman Commission (1898-1901)*

1. "Universal Suffrage" and Separation of Church and State

As Commander-in-Chief of the United States, President William McKinley ruled the Philippines for nearly three years until a new system of government was established. Needing administrators of the colony to execute his orders, he created the First Philippine Commission and appointed Jacob Schurman, Major-General Elwell S. Otis, Rear Admiral George Dewey, Charles Derby, and Dean C. Worcester. The Commission's primary duties were to promote U.S. interests and to provide for the security of Americans in the Philippines.⁶¹ During this initial phase, American administrators sought principally to remedy the errors of past rulers rather than to offer new initiatives.⁶² Commissioner Worcester later wrote that the Americans "adopted the policy of passing no laws except in case of emergency."⁶³

The Commission first enacted legislation that permitted Filipino males to vote if they: (1) could speak and read English or Spanish; (2) owned property valued at more than 500 pesos (at that time U.S. \$250); or (3) had held a government position during Spanish colonial rule.⁶⁴ The law mandated that municipal officers be Filipinos elected by popular vote. Unlike the Spanish, the Americans did not appoint government officials. Yet those Filipinos eligible to vote and therefore hold office, only about three percent of the total population, were generally members of the same class of people from whom the Spanish had chosen their bureaucrats, the *ilustrados*. In sum, the United States confirmed the power of the established Filipino elite.

In the Philippines, the Spanish colonial government and the Catholic Church had collaborated, often operating as one unit. But American legal principles, as embodied in the Constitution, would not sanction such interlocking relationships between church and state. Thus, on December 18, 1898, shortly after the signing of the Treaty of Paris, the U.S. government made its first substantial change in Philippine law by issuing General Orders No. 68. This law introduced civil marriage to the Philippines, the initial step in the U.S. effort to separate church and state.

61. LAW OF THE CIVIL GOVERNMENT, *supra* note 8, at 11.

62. STANLEY, *supra* note 26, at 90.

63. WORCESTER, *supra* note 35, at 275.

64. U.S. PHILIPPINE COMMISSION, ADMINISTRATIVE CODE OF THE PHILIPPINE ISLANDS 224 (1916) [hereinafter ADMINISTRATIVE CODE].

Such reforms coincided with *ilustrado* visions of a new society and thus they assisted the Americans in efforts to create a secular government.

2. Initial Collaboration

In 1899, Trinidad H. Pardo de Tavera, and other *ilustrados*, came before the Schurman Commission denouncing both Filipino actions against the United States government and anti-American sentiments. The Americans realized that these men “would prove useful allies in the future. ‘As leaders of the people they must be the chief agents in securing their peoples’ loyal obedience to the new government.’”⁶⁵

The Americans relied on *ilustrado* lawyers in particular, for assistance in developing and implementing legal codes that conformed to American judicial standards. Owen Lynch, a legal scholar of the Philippines, wrote that among the *ilustrados*, “law was the most attractive [profession]. ‘The great ambition of most Filipinos in a position to do so was to study law and enter the government service.’”⁶⁶ More specifically, “law was considered a passport to the political arena”⁶⁷ and “a number [of *ilustrados*] were largely involved with the practice, teaching, and study of the law.”⁶⁸ In Michael Cullinane’s list of important Filipino political figures and *ilustrados*, nearly thirty-six percent were members of the legal profession, a higher percentage than in any other profession. Cullinane noted that when Major-General Otis, the Military Governor of the Philippines in 1900, began reforming the system of justice, he appointed twenty-eight *ilustrados* to positions on the courts.⁶⁹ Thus, the Americans allowed the *ilustrados* to dominate the Filipino judicial process from the outset, even appointing the *ilustrado* Cayetano Arellano as Chief Justice of the Philippine Supreme Court in June of 1899.

The Americans permitted the Spanish court system to remain essentially untouched: Filipino justices of the peace, most of whom were *ilustrados*, presided over the local courts and took charge of routine legal matters, but the highest court of appeals was the U.S. Supreme Court instead of the Spanish Council of the Indies. In sum, the Schurman

65. MAY, *supra* note 1, at 27.

66. Owen J. Lynch, *Indigenous Social Formations and the Philippine State*, in CRITICAL DECADE: PROSPECTS FOR DEMOCRACY IN THE PHILIPPINES IN THE 1990’s 26 (Dolores Flamiano & Donald Goertzen, eds., 1990).

67. *Id.* at 27.

68. Ruby Rivera Paredes, *The Partido Federal, 1900-1907: Political Collaboration in Colonial Manila*, 85 (Ph.D. dissertation, University of Michigan, 1989).

69. Cullinane, *supra* note 9, at 75.

Commission relied heavily on the power and the knowledge of the old Filipino elite, as did its successor, the Taft Commission.

3. General Orders No. 58—The Code of Criminal Procedure

The Americans introduced a second major change to Philippine law on April 30, 1900 when Major-General Otis issued General Orders No. 58 as the Code of Criminal Procedure for the Philippines.⁷⁰ To compose this code, Otis enlisted the aid of a group of *ilustrado* lawyers and justices familiar with the Spanish legal system then in place. The Code, which went into effect on May 15, 1900, included a clause that all existing laws should remain valid unless specifically repealed or modified.⁷¹ On the assumption that an entirely new criminal code would disrupt the work of judges and lawyers who were already familiar with the present system, the U.S. military government chose only to adopt new procedural laws.⁷² It left the substantive Roman laws intact, with one administrator praising the existing Penal Code as a "product of the best legal minds of Spain."⁷³ Thus American officials permitted much of the Spanish substantive criminal law to continue for it was not inconsistent with their legal tradition.

However, the Americans also incorporated innovations by introducing the Filipinos to the writ of habeas corpus, a privilege guaranteed in the U.S. Constitution.⁷⁴ They sought to alleviate the problems engendered by the lack of procedural rights in the Spanish system and its harsh punishments. The writ of habeas corpus is intended to "test the legality of the detention or imprisonment" and to release a person from unlawful imprisonment.⁷⁵ Through the inefficiency of their judicial system, the Spanish had detained many Filipino prisoners far longer than their maximum possible prison sentence. Considering the Spanish practice to be cruel and unusual punishment, the Americans permitted prisoners to file for a writ of habeas corpus if they believed they were wrongly detained.⁷⁶

General Orders No. 58 also changed the manner of filing a complaint. A sworn statement usually filed by the aggrieved party in a lower court (often the Justice of the Peace courts in the Philippines), or a complaint

70. Gen. Orders No. 58, Office of the U.S. Military Governor in the Philippine Islands (1900) [hereinafter Gen. Orders No. 58].

71. *Id.* § 1.

72. CAMERON W. FORBES, *THE PHILIPPINE ISLANDS* 140-141 (1945).

73. James H. Blount, *Some Legal Aspects of the Philippines*, 14 AM. LAW. 495, 496 (1906).

74. U.S. CONST. art. I, § 9, cl. 2.

75. BLACK'S LAW DICTIONARY 709 (6th ed. 1990).

76. ALBERT, *supra* note 22, at 40.

initiated a legal proceeding. The Orders now required that the complaint be presented soon after the alleged offense had been committed.⁷⁷ The Spanish had been more lax about the timeliness of the filing, but the new American regulations mandated that a complaint had to be submitted as soon as the parties became aware of the infraction to insure accuracy and truthfulness.

Having no formal code of procedure, the Spanish offered no guidance for filing a complaint. General Orders No. 58 offered an entire section devoted to the procedures involved in submitting such a document,⁷⁸ including: (1) the full and true name of the defendant(s); (2) the designation of the offense; (3) the acts complained of in plain language; (4) a statement that the offense was committed in that court's jurisdiction; and (5) the names of the persons involved in the offense.⁷⁹

Requiring a designation of the offense compelled the person filing the complaint to focus on the offense and determine if it had any chance of success before he tied up the courts with frivolous litigation. Since this section contained only the accusers' version of the facts, the offender could be convicted of either a graver or a lesser offense if other evidence emerged when the case went to trial.

Pursuant to this section, the person bringing charges had to document the acts that "constitut[ed] the crime or public offense in ordinary and concise language . . . in such a form as to enable a person of common understanding to know what is intended."⁸⁰ This document provided the court with the alleged actions that comprised the offense. Failing to use formal or statutory language did not render the complaint invalid, but the correct format had to be used.⁸¹

77. GUILLERMO B. GUEVARA, *THE CODE OF CRIMINAL PROCEDURE OF THE PHILIPPINE ISLANDS* 8 (1922).

78. Gen. Orders No. 58, *supra* note 70, § 6.

79. *Id.*

80. *Id.* § 6(3).

81. The correct format for a complaint was:

The United States against [____],
In the Court of _____, for _____, Province of _____, the _____ day of _____,
19____.

[____] is accused by the undersigned of the crime of (giving its legal appellation, such as murder, arson, robbery, or the like, or designating it as a felony or misdemeanor), committed as follows:

That said [____] on the _____ day of _____, 19____, at the _____ of _____ Province of _____, (here set forth the acts or omissions [sic] charged as an offence), contrary to the statute in such case made and provided.

The last substantive requirement for the complaint that General Orders No. 58 introduced was that it be filed in the correct jurisdiction. In technical terms, jurisdiction "is the power conferred by law upon a judge or court to try a case, the cognizance of which belongs to them exclusively."⁸² A court's jurisdiction was generally determined by two main factors: the geographic limits over which the court presided and the type of action—civil or criminal.⁸³

The final change in the filing of a complaint that the Americans instituted via General Orders No. 58 was that the accuser had to file a separate complaint for each offense charged. Under the Spanish system, the prosecution could file one complaint for multiple offenses. Otis determined that the Spanish procedure was cumbersome but concurred that one complaint could charge an offense with more than one act as long as the acts were related.⁸⁴

Subsequent to the filing of a complaint, the new system of procedure mandated a preliminary examination to determine if the arrest of the offenders was warranted.⁸⁵ At that time, a justice of the peace heard the depositions of the prosecution and his/her witnesses. The Americans shifted the burden of proof and production of evidence to the prosecution so that it was up to the accuser to produce sufficient evidence to convict⁸⁶ at the preliminary examination. Thus, under General Orders No. 58, the defendant was presumed innocent until proven guilty, increasing the burden on the prosecution.⁸⁷

The new legal philosophy represented a dramatic shift from the Spanish system. Protection of the rights of the accused became a paramount consideration in this system of criminal procedures. Only if the Justice of the Peace agreed that the evidence before him was satisfactory

(Signed)_____

Gen. Orders No. 58, *supra* note 70, § 8.

82. GUEVARA, *supra* note 77, at 14.

83. Currently, in the United States, determining jurisdiction is a much more complicated process and encompasses other factors, but during the American years in the Philippines only these two requirements existed. See JOHN J. COUND ET AL., *CIVIL PROCEDURE: CASES AND MATERIALS* 65-195 (6th ed. 1993).

84. For example, armed robbery was one offense and needed only one complaint: robbery with a gun rather than possession of a weapon and stealing.

85. Gen. Orders No. 58, *supra* note 70, §§ 13-14.

86. "Sufficient evidence to convict" was the standard used for most American criminal trials at the time.

87. Fisher, *supra* note 38, at 41.

and provided reasonable grounds for the alleged offender's arrest did he issue a warrant for the arrest.⁸⁸

Under the U.S. Code, after the accused was arrested, he appeared before the Justice of the Peace who explained the allegations of the complaint. In contrast to the Spanish system, the offender consequently knew all the charges against him. This new Code of Criminal Procedure offered greater equality between the accuser and the accused.

Following an arrest, the Justice of the Peace determined bail. The American judicial system in the Philippines permitted an offender to be released on bail, provided he was not charged with a capital offense.⁸⁹ Under the Spanish system, the accused languished in prison until his case went to trial. Yet even under General Orders No. 58, the accused was not permitted a bail hearing. Instead, the Justice of the Peace set bail according to the offense charged and the danger to society the offender posed.

If, at any stage during these proceedings, the offender believed he was being wrongly detained, he could petition the court for a writ of habeas corpus. Although American courts in the Philippines did not grant these writs liberally, they did review each individual request.⁹⁰

After the Justice of the Peace had published the amount of the defendant's bail, the parties agreed on a trial date. General Orders No. 58 guaranteed the right to a speedy trial.⁹¹ In direct response to their criticism of the inefficiency of the Spanish judicial system, the Philippine Commissioners borrowed this section of General Orders No. 58 on a speedy trial from the U.S. Constitution.⁹² "Speedy" is not defined either in the code of procedure for the Philippines or in the U.S. Constitution but case law is useful here in explaining the meaning of this term. In 1908, the Philippine trial court recessed a homicide trial for six months, and the U.S. Supreme Court held that this adjournment did not violate the right to a speedy trial.⁹³ Thus "speedy" could be interpreted rather loosely.

The most significant American innovations in the Philippine legal system entailed providing rights to the defendant at trial and allowing trials to be open to the public.⁹⁴ In their judicial system, the Spanish colonials had not permitted the accused to be involved or confronted during the trial

88. Gen. Orders No. 58, *supra* note 70, § 13.

89. Organic Act of the Philippines, ch. 1369, 32 Stat. 691 (1902).

90. ALBERT, *supra* note 22, at 410.

91. Gen. Orders No. 58, *supra* note 70, § 15(7).

92. U.S. CONST. amend. VI.

93. United States v. Pellejera, 17 Phil. 587 (1909).

94. Gen. Orders No. 58, *supra* note 70, § 15.

process.⁹⁵ Thus, prior to American occupation, the Filipinos were unfamiliar with processes such as cross-examination and the right to appear in person to defend oneself.

General Orders No. 58 secured the defendant's right to have an attorney present at the trial, a right also guaranteed to defendants in the United States legal system.⁹⁶ If the defendant were unable to employ an attorney, the court would appoint one for him. The Filipino Chief Justice of the Philippines summarized the changes that ensued when the Commission instituted General Orders No. 58:

This law, based upon the accusatory system, has abolished the inquisitorial period so derogatory of 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 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 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 provided for a 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; 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.⁹⁷

General Orders No. 58 also introduced the concepts of demurrer and plea bargaining to the Philippine judicial system. A defendant demurs when he or she admits all the allegations of the complaint but asserts that such allegations are insufficient to form a cause of action rendering the plaintiff's case invalid. A plea, on the other hand, is a direct response to the charge. General Orders No. 58 offered four types of pleas: "(1) guilty; (2) not guilty; (3) a former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of guilty;

95. LEROY, *supra* note 36, at 108.

96. Gen. Orders No. 58, *supra* note 70, § 15(1).

97. LEROY, *supra* note 36, at 279-280 (vol. 2).

[and] (4) once in jeopardy, which may be pleaded with or without a plea of guilty.”⁹⁸

A defendant, who offers a guilty plea may, at any time before judgment on the plea, withdraw it and substitute a not guilty plea instead. Following the plea, the defendant proceeds to trial.

B. Right to a Jury Trial And The Status of The Philippines During The Schurman Commission Era

Trials in early twentieth-century Philippines resembled those in the United States at the time though they lacked jury trials, a traditional symbol of American democracy. The Report of the Philippines to the President in 1900 indicated that the Commission originally intended to give the Filipinos the right of a jury trial. The authors wrote that “criminal procedure under the Spanish codes is arbitrary and not in accordance with rules prevailing either in Federal or State systems. In due time it should be modified. There should be trial by jury and many other changes.”⁹⁹ Yet although “many other changes” did take place, the Americans never implemented jury trials in the Philippines.

The U.S. Constitution guarantees the right to a jury trial for all criminal offenses.¹⁰⁰ The Sixth Amendment declares that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.”¹⁰¹ Permitting Filipinos this right meant the U.S. Constitution would have to apply to the colony, for neither General Orders No. 58 nor any other laws the Americans introduced addressed the issue of a jury trial. The dilemma for the United States was twofold. The Constitution gives Congress the power to govern all territories legitimately acquired.¹⁰² Yet should Congress be bound by the Constitution in devising legislation for these territories and compelled to offer the civil rights implicit in the Constitution to the residents of these territories? Americans in the early twentieth century diverged in their response to this question.

Two sides arose to debate these issues--those Americans and Filipino *ilustrados* who supported the “benevolent assimilation” policy and their

98. Gen. Orders No. 58, *supra* note 70, § 24.

99. REPORT OF THE PHILIPPINE COMMISSION, *supra* note 27, at 125.

100. U.S. CONST. amend. VI.

101. *Id.*

102. *Id.* art. IV, § 3.

opponents who were often associated with the anti-imperialist movement that had formed in response to American colonization of the Philippines.

Supporting the policy of "benevolent assimilation" were those Americans who had originally intended to remain in the Philippines only for a few years or until the Filipinos were capable of self-government. This group included American Commissioners, politicians, and businessmen in the Philippines and the United States, whose initial ideas of withdrawing from the archipelago ended when they perceived the opportunities available for personal advancement. Most *ilustrados* supported the policy of "benevolent assimilation" because they recognized the potential benefits American colonization could offer them. The *ilustrados* expected and received political and judicial power in exchange for their assistance to the colonial regime. In a curious symbiosis, both American officials and Filipino *ilustrados* may have capitalized upon their shared perception that ordinary Filipinos were somehow incapable of self-government.

These attitudes permitted officials such as William Howard Taft to justify American colonial policies, including depriving the Filipinos of the right to a trial by jury. In fact, in 1901, expressing the sentiments of most American colonists in the archipelago as well as the elite Filipinos, Taft said

I have not considered it advisable to introduce any fads like trial by jury of your peers into my administration. Plain straightforward dealing is my motto. A Filipino at his best has only learned half his duty to mankind. *He can be tried but he can't try his fellow man.* It takes him too long. But in time I hope to have them trained to a point where they can be good men and true at the quest.¹⁰³

Ilustrado Benito Legarda, an attorney himself, echoed these attitudes in a letter to President McKinley. He wrote that the Filipinos were incapable of self-government for "they are undoubtedly without political preparation, totally ignorant, and do not know what is good for them,"¹⁰⁴ implying that they were incapable of participating in a judicial system based on the principle of trial by jury.

In the early twentieth century, many Americans and elite Filipinos perceived the average Filipino as occupying a lower rung on the

103. MR. DOOLEY REMEMBERS: THE INFORMAL MEMOIRS OF FINLEY PETER DUNNE 294, (Philip Dunne, ed. 1963) (emphasis added) [hereinafter MR. DOOLEY REMEMBERS].

104. MAY, *supra* note 1, at 27.

evolutionary ladder. In fact, the official 1903 census conducted in the Sulu Zone during American occupation¹⁰⁵ distinguished "between the 'civilized' and the 'wild' inhabitants of the Philippine Islands,"¹⁰⁶ with the 'civilized' representing any Westerners who lived in Sulu and the 'wild' the indigenous inhabitants of the island. A U.S. Army General stationed in the Philippines wrote of the inhabitants of Sulu: "they are essentially different people from us in thought, word and action and their religion will be a serious bar to any efforts towards Christian civilization."¹⁰⁷ As Edward Said explained in his work on Orientalism, imperialists often perceived

European identity as a superior one in comparison with all non-European peoples and cultures. There is in addition the hegemony of European ideas about the Orient, themselves reiterating European superiority over Oriental backwardness, usually overriding the possibility that a more independent, or more skeptical thinker might have had different views on the matter.¹⁰⁸

American colonists often denigrated Philippine culture in order to justify their efforts to Westernize the Filipinos.¹⁰⁹ On occasion, American colonial officials stationed in the Philippines perpetuated myths about the Filipinos by grouping them together and attributing negative characteristics to them in general terms. Their writings about the reputed backwardness of Asian societies served to justify their decision not to introduce jury trials to the early American-occupied Philippines. Philippine Commissioner Bernard Moses characterized the Filipinos as being "a stage of civilization distinctly lower than that of the civilized peoples of the West."¹¹⁰ James A. LeRoy, Secretary to Commissioner Worcester, summarized these Western attitudes in a passage from his book on Filipino life in the early twentieth century:

there is a certain school of experts which maintains that Orientals are not only practically different in many ways to-day

105. The Sulu Zone had, and still has, the largest number of Muslim Filipinos in the archipelago.

106. GOWING, *supra* note 2, at 45.

107. *Id.*

108. EDWARD W. SAID, *ORIENTALISM*. 7 (1979).

109. BRUNO LASKER, *PEOPLES OF SOUTHEAST ASIA* 23 (1944).

110. U.S. PHILIPPINE COMMISSION, 2 REPORT OF THE PHILIPPINE COMMISSION TO THE PRESIDENT 882 (1902).

from the dominant peoples of the Occident, but that they are inherently different beings, having a mental constitution not really to be understood by Westerners, and capable of 'modern progress,' as the Westerner views progress, only to a limited degree, and under the guidance of Occidental mentors.¹¹¹

Asserting that Orientals were incapable of "modern progress" on their own, these Americans could justify intrusion on the Philippines as a means of teaching the natives ways to overcome their backward way of life. Many colonials asserted that, with Western influence and guidance, the native societies could achieve a higher level of civilization. Philippine Commissioner Luke Wright wrote that "the great mass of them [Filipinos] care but little under what form of government they live, and the educated and intelligent among them as a rule recognize their utter inability to maintain an independent government of their own."¹¹²

Partially in response to such attitudes and policies in the Philippines, an anti-imperialist movement arose in the United States. Its members challenged the view that Filipinos were unprepared for such constitutional rights as trial by jury. Composed of a wide and varied membership from Republican Senator George Frisbee Hoar of Massachusetts¹¹³ to soldiers stationed in the Philippines, such as Lieutenant John D. Ford, U.S.N., and Brigadier General Charles A. King,¹¹⁴ the anti-imperialists argued that the Filipinos were indeed sufficiently competent to administer their own affairs. After a visit to the Philippines in the early 1900's, Congressman John Franklin Shafroth of Colorado wrote that "there are very few people who are not capable of self-government."¹¹⁵ The anti-imperialists thus championed the extension of the right to trial by jury to the Filipinos, setting the stage for a lengthy legal and political struggle over the issue.

American colonial officials and the anti-imperialists were at odds on the issue of trial by jury. In debating whether the Filipinos ought to be permitted this right, both sides looked to American case law precedent to

111. JAMES A. LEROY, *THE PHILIPPINES CIRCA 1900: PHILIPPINE LIFE IN TOWN AND COUNTRY* 290 (1905).

112. H. W. BRANDS, *BOUND TO EMPIRE: THE UNITED STATES AND THE PHILIPPINES* 63 (1992).

113. Stuart C. Miller, *Our Mylai of 1900: Americans in the Philippine Insurrection*, in *AMERICAN EXPANSIONISM; THE CRITICAL ISSUES* 106 (Marilyn Blatt Young, ed. 1973).

114. For anti-imperialist attitudes among soldiers, see ORA WILLIAMS, *ORIENTAL AMERICA: OFFICIAL AND AUTHENTIC RECORDS OF THE DEALINGS OF THE UNITED STATES WITH THE NATIVES AND THEIR FORMER RULERS* (1899).

115. Congressman John Franklin Shafroth, *Can the Filipinos Govern Themselves? A Letter From Manila* 3-4 (exact date unknown).

bolster their arguments. Drawing on a case from 1845, proponents of jury trials argued that because the United States had acquired the Philippines, American rather than Spanish laws must apply. In this case, the U.S. Supreme Court held that “every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of *its own* government and not according to those of the government ceding it.”¹¹⁶

To refute this assertion, members of the Philippine Commission and the *ilustrados* cited a later case, responding that so long as existing native laws were not in conflict with the United States Constitution or other U.S. laws, the foreign laws could remain in place.¹¹⁷ A region had to have solely American laws only if it became a U.S. territory *and* was no longer a foreign country. In continuing to defend the absence of jury trials in the Philippines, some American colonial officials asserted that the Spanish had not instituted such a system and thus no precedent existed in the Islands. The Filipinos never had experienced trials with juries and, therefore, the Americans were not depriving them of this right.¹¹⁸

In 1901, members of Congress discussed the status of the Philippines and its criminal procedure with a brief mention of trial by jury in reference to treason within the Philippines. Reflecting the interests of both the Americans in the Philippines and the *ilustrados*, Elihu Root, the U.S. Secretary of War at the time, supported a bill which he hoped Congress would adopt for the Philippines. It declared that any individual found guilty of treason would be imprisoned and sentenced to hard labor for no less than five years in addition to a fine of not less than \$10,000.¹¹⁹

Senator George Hoar, an anti-imperialist from Massachusetts, objected to this harsh punishment. He explained that to be guilty of treason in the United States a person must conspire against his own government. Since a Filipino charged with treason was actually reacting against foreign rule, such severe punishment was cruel and unusual.¹²⁰ In addition, he pointed out that the standard for treason in the two countries differed. In the United States, treason consisted of “actual levying war against the Government or giving aid and comfort to the enemies, while treason in the Philippine Islands is a very different thing,”¹²¹ since mere advocacy of independence was considered treasonous. Continuing, he wrote that, at

116. Pollard's Lessee v. Hogan, 3 How. 212, 225 (1845) (emphasis added).

117. Ely's Administrator v. United States, 171 U.S. 220 (1898).

118. Fisher, *supra* note 38, at 115.

119. 57 CONG. REC. S1394 (1901).

120. *Id.* S1395

121. *Id.*

least in the United States, "the offense both of the traitor and of the person charged with misprision of treason is to be tried by a *jury of peers and fellow-citizens* of the person charged and in a district previously ascertained where the offense was committed."¹²² He implied that the Americans should offer the Filipinos the same rights and privileges that they offered their own people rather than imposing harsher punishments, without recourse to trial by jury, on the indigenous Filipinos.

As the debate continued, the senators began to argue about the applicability of the Constitution to the Philippines. In 1901, Senator Joseph B. Foraker of Ohio explained that, as the *ilustrados* attested, most lawyers and judges in the Philippines did not understand some of the rights guaranteed to U.S. citizens in the Constitution, such as trial by jury. Thus, he suggested, it would be impractical to proffer these rights in the Philippines.

C. *The Philippine (Taft) Commission and the Philippine Assembly (1901-1907)*

The period of military rule finally ended in 1901 when the U.S. Congress passed the Spooner Amendment¹²³ (which transferred power over the Philippine Islands from the President of the United States, as Commander-in-Chief, to the Congress and made the Governor-General the sole executive authority in the Philippines).¹²⁴ The amendment provided that:

all military, civil, and judicial powers necessary to govern the Philippine Islands . . . shall, until otherwise provided by Congress, be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said Islands in the full enjoyment of their liberty, property, and religion.¹²⁵

President McKinley, still under the impression that the Filipinos were incapable of self-government, commissioned the Second Philippine Commission in 1901 to work with the *ilustrados* in administering and

122. *Id.* (emphasis added)

123. Harvey, *supra* note 52, at 75.

124. ADMINISTRATIVE CODE, *supra* note 64, at 59.

125. 56 CONG. REC. 763 (1901).

"civilizing" the Philippine Islands. Appointing William Howard Taft, Dean C. Worcester, Luke E. Wright, Henry C. Ide, and Bernard Moses, he chose new commissioners with the exception of Dean Worcester, the sole holdover. This new agency became known as the Taft Commission after its president, William Howard Taft.

In his instructions to the Taft Commission, McKinley emphasized that the government of the Philippines should be established for "the happiness, peace, and prosperity of the people of the Philippine Islands."¹²⁶ He advised them that certain principles such as life and liberty were essential to a strong government and thus had to be instilled in the Filipino culture. As he had with the Schurman Commission, McKinley instructed the new Commissioners that they were in the Philippines mainly to insure that no injustice occurred. He advised them that they should refrain from making any substantial changes in the laws unless the existing laws violated American ideals of justice.¹²⁷ Taft, in turn, professed that his mission in the Philippines was to "educate them slowly in the ways and customs of the country [the United States]."¹²⁸

In its first major legislation for the Islands, the U.S. Congress passed the Organic Act of the Philippine Islands or the Philippine Bill of 1902 ("Organic Act"). This Act formally shifted the government of the Philippines from military to civilian rule. The U.S. Congress organized a judicial system which included the Supreme Court and numerous lower courts down to the municipal level.¹²⁹ The most "Filipinized" branch of the central government, i.e. the court system, included the Chief Justice, two indigenous Justices of the Supreme Court,¹³⁰ and a majority of native judges in the municipal courts.¹³¹ The Americans permitted the Justice of the Peace courts to remain and installed Filipino justices to head these courts. Although there were some Filipinos within the judicial apparatus, the majority of higher-placed judges were Americans.¹³² In addition, those Filipinos within the system were primarily representative of the elite upper class, the *ilustrados*. The American officials did not consider that Filipinos would be concerned about which of the indigenous people they selected to

126. President McKinley, Instructions of the President to the Second Philippine Commission, in WORCESTER, *supra* note 35, at 795.

127. *Id.* at 795.

128. MR. DOOLEY REMEMBERS, *supra* note 103, at 294.

129. REPORT OF THE PHILIPPINE COMMISSION, *supra* note 27, at 83.

130. MALCOLM, *supra* note 24, at 228.

131. SALAMANCA, *supra* note 47, at 72.

132. *Id.* at 72.

be on the court. They assumed that provided the Justice was Filipino, the people would be satisfied regardless of the justice's ruling style or class.¹³³

The U.S. President appointed justices to the Philippine Supreme Court, and the Governor-General selected justices for the Courts of First Instance and the Justice of the Peace. The U.S. Supreme Court was the highest appellate court for criminal and civil cases in the Philippines. However, few cases reached this level since the Supreme Court dealt only with constitutional issues and the Constitution did not apply to the archipelago.

In reaching decisions, common law courts in the Philippines studied prior U.S. case law either in the Philippines, United States or other U.S. territories. The courts considered local laws when there was no existing common law on the issue and when the traditions did not conflict with American beliefs. Prior Spanish decisions were only persuasive authority, not precedent, and did not preclude local courts from exercising independent judgment.¹³⁴

Like the Spanish rulers, the American colonial administration permitted the numerous municipal courts to resolve most civil cases, but criminal cases had to be argued in front of American justices. The Commission permitted the courts to continue to employ the Spanish laws in both civil and criminal cases but justices had to examine and apply American procedural law in the conduct of criminal trials.¹³⁵ Any laws inconsistent with American beliefs had already been excised from the Philippine law codes. The Americans found that the main flaw during the Spanish regime was that laws were poorly administered and believed that the shortcomings were not in the laws themselves.

D. Right to a Jury Trial During The Taft Commission Era

Although the Organic Act and the new judicial system left the writ of habeas corpus intact and, in theory, offered a host of other Constitutional rights and freedoms,¹³⁶ it failed either to extend or to deny the right of a jury trial to the people in the Philippines. The Act, however, stated explicitly that Section 1891 of the U.S. Revised Statutes of 1878 did not

133. *Id.* at 31. Once again these attitudes reflected the Orientalist beliefs prevalent among Americans at this time.

134. George A. Malcolm, *Philippine Law*, 11 ILL. L. REV. 331, 391-396 (1916).

135. Gen. Orders No. 8, Office of the U.S. Military Governor in the Philippine Islands (1893).

136. Organic Act of the Philippines, ch. 1369, 32 Stat. 691 (1902).

apply to the Philippines.¹³⁷ Section 1891 provided that “the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States.”¹³⁸

Thus, although the right to a trial by jury could not be accepted in the Philippines as “implied law,” nor could this right be automatically discounted because Congress had not specifically indicated its views on the issue.

In 1904, a U.S. Supreme Court case, *Dorr v. United States*, addressed the issue of whether, in the absence of a Congressional statute expressly conferring the right, a trial by jury was necessary if the defendant in a U.S. territory had made such a request.¹³⁹ In this case, the justices explained that Americans went to the Philippines to teach Filipinos how to govern themselves and during times of “pupilage, territories and dependencies do not constitute a sovereign power.”¹⁴⁰ Therefore, Congress had the power to establish and dispose of rules for the territories¹⁴¹ as well as the right to enact laws for these regions without subjecting them to U.S. restrictions.¹⁴² Congress had thus acted within its Constitutional mandate in not extending the right of a trial by jury to the Philippine Islands. The right to a jury trial was not, the Court continued, a fundamental one such as the right to a speedy and public trial. It was rather a method that the state had the option of employing.¹⁴³ Since President McKinley had not sanctioned a jury trial system in his instructions to the Commission nor formally extended such a privilege to the archipelago, the Court determined that a trial in the Philippines need not include a jury.¹⁴⁴

To justify not instituting jury trials, the Philippine Commission drew upon another U.S. Supreme Court case in 1905. Deliberating over the status of Alaska,¹⁴⁵ the Court distinguished between a territory *of* the United States and a territory *belonging* to the United States. The Court defined a territory *of* the United States as an area incorporated into the

137. *Id.* at 1.

138. *Id.*

139. *Dorr v. United States*, 195 U.S. 138 (1904).

140. George Malcolm, *The Status of the Philippines*, 14 MICH. L. REV. 529, 536 (1916).

141. *Dorr*, 195 U.S. at 139.

142. *Downes v. Bidwell*, 182 U.S. 244 (1900)

143. *Dorr*, 195 U.S. at 144.

144. *Id.* at 145.

145. *Rasmussen v. United States*, 197 U.S. 516 (1905).

United States but not yet a state, such as Alaska or New Mexico. Since the Philippines and Puerto Rico, on the other hand, were territories governed by the United States and were not slated to be incorporated as states, they only *belonged* to the United States¹⁴⁶ The Philippine Commission used this decision as a rationale for permitting trials without juries: as a territory that only *belonged* to the United States, the Philippines could not embrace the Constitution as its own. American lawmakers thus avoided the Constitutional requirement of a right to a jury trial in the Philippines.

Congress made its final judgment on this issue after discussions with the Chief Justice of the Supreme Court of the Philippines, the *ilustrado*, Cayetano Arellano. In a hearing before the U.S. Secretary of War and certain Congressmen in 1905, Chief Justice Arellano stated that:

even among the class of persons in these Islands who are fairly well educated, I do not believe that we could expect them to have the stability of judgment which would be necessary for them to pass fairly and justly upon the questions that a jury would have to decide.¹⁴⁷

This judgment pleased the American colonial officials in the Archipelago. As previously noted, many colonial Americans believed that most Filipinos did not have the intellectual capacity or cultural sophistication to understand the intricacies of judging their peers in trial. Or perhaps they simply used this rationale to deny Filipinos a right integral to the American democratic system of justice. Historian Peter Stanley noted that many American colonists considered the Filipinos to be "ignorant, superstitious, and credulous in remarkable degree" and that "social regeneration was essential."¹⁴⁸ In fact, Taft wrote in 1901 that "no Filipino judiciary could have any adequate conception of what practical civil liberty is."¹⁴⁹ Naturally, such attitudes served to justify this undermining of a significant feature of Philippine legal sovereignty. It also perhaps offered a rationale for Americans to stray considerably from their original intention of remaining in the Philippines just long enough to establish a system of self-government.

146. Odlin, *supra* note 55, at 330-331.

147. U.S. Philippine Commission, Hearings Before the Secretary of War and the Congressional Party Accompanying Him to the Philippine Islands 103 (1905).

148. STANLEY, *supra* note 26, at 83.

149. Taft Papers, Philippine Commission, Library of Congress (May 26, 1901).

Although not even Americans in the Philippines were permitted trial by jury,¹⁵⁰ their U.S. citizenship did permit them preferential treatment within the legal system. Americans living in the colony who committed criminal offenses were not sentenced to the same punishments as their Filipino counterparts were for similar crimes. For example, Lieutenant Preston Brown of the U.S. Army was supposed to be discharged from service and sentenced to five years in prison for murdering a Filipino. The court, on review, further decreased this extraordinarily mild sentence. It permitted him to remain in the service but his pay was reduced by fifty percent for nine months, and he was shifted down thirty five places on the promotion list. By contrast, the sentences for Filipinos were never shortened.¹⁵¹

After assuming office in 1901, the Taft Commission initiated many changes in the laws of the Philippines but retained General Order No. 58, which remains the basis of the existing Code of Criminal Procedure of the Philippines. Although numerous revisions have taken place, Philippine criminal procedure today is modeled on the American procedure of the early 1900's.¹⁵²

From 1901 to 1907, the U.S. Congress gradually enacted laws that brought the Philippine legal structure closer to the U.S. system. Though the U.S. Constitution did not apply to the Philippines, the Filipinos were accorded many of the rights guaranteed by the Constitution and, in particular, the Bill of Rights (with the exception of the right to a trial by jury). Despite the absence of jury trials, the early American era was renowned for the introduction of individual freedoms, sparking a modern Filipino historian to remark that in the early American era "the Filipinos enjoyed the era of freedom -- freedom of religious worship, freedom of the press, freedom to assemble peaceably for the redress of grievances, freedom to change domicile, and freedom of speech."¹⁵³

Capitalizing on Orientalist beliefs similar to those adhered to by the European colonials, the American colonials justified both their occupation and their restriction of individual rights, including the right to trial by jury. With the assistance of the *ilustrados*, American officials introduced a

150. *Dorr v. United States*, 195 U.S. 138 (1904).

151. Miller, *supra* note 113, at 113. Discussion of punishments in the colonial Philippines is confined to this small section since neither General Order No. 58 nor the Organic Act address this aspect of Filipino law, making it difficult to obtain any information regarding punishments at this time.

152. MELQUIADES J. GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW 86 (6th ed. 1955).

153. TEODORO A. AGONCILLO & MILAGROS C. GUERRERO, HISTORY OF THE FILIPINO PEOPLE 430 (1970).

formal code of criminal procedure to the Islands shortly after their arrival in an initial attempt to instruct the Filipinos in "civilized" laws. For more than thirty years following their arrival, they continued thus to "civilize the natives."

IV. A BRIEF LOOK AT THE END OF THE AMERICAN ERA AND THE POST INDEPENDENCE YEARS

A. *Government Under the Jones Bill (October 16, 1916-November 15, 1935)*

As part of his campaign in 1912, democratic presidential candidate Woodrow Wilson agreed to grant independence to the Philippines as soon as he was confident that the Filipinos were capable of sustaining a stable government on their own.

Almost immediately after assuming office, President Wilson sent an advisor to the Philippines to assess the country's readiness for self-government. Although Wilson's advisor returned with a "glowing report on the Filipinos' capacity to govern themselves," the U.S. Congress did not grant the Filipinos partial self-government power until four years after reviewing this report to Wilson.¹⁵⁴

Under pressure from a few liberal U.S. Congressmen and the Filipino people for greater independence, the Congress passed the Jones Law in August of 1916. Seeking to satisfy the Filipinos and to quell criticism, Congress passed this bill which opened by noting that "it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States."¹⁵⁵

Congress thus replaced the American-dominated Philippines Commission with a legislature that included an all-Filipino Senate and a House of Representatives with popularly elected officials. The U.S. government asserted that it worked to train more Filipinos so they would be equipped to run their own government.¹⁵⁶ Even though there were more Filipinos in legislative and judicial positions, the American Governor-General retained veto power and the right to appoint all Cabinet officials.

154. *Id.* at 343.

155. MALCOLM, *supra* note 24, at 231.

156. FELICITAS Y. PADILLA, *THE PHILIPPINE GOVERNMENT (EVOLUTION: PRE-SPANISH TO THE AQUINO GOVERNMENT) AND THE 1987 CONSTITUTION (WITH ANNOTATIONS)* 37 (1987).

Moreover, American justices comprised the majority on the Philippine Supreme Court, and the highest court of appeals remained the U.S. Supreme Court. Thus the Jones Law, though a gradual step towards an independent Philippines, still left most of the decision-making power in the hands of Americans.

B. Commonwealth and Independence

The Tydings-McDuffie Act of 1934 created the Commonwealth of the Philippines and provided for independence from U.S. control in 1946. On July 1, 1940, the Supreme Court of the Philippines promulgated the Rules of the Court (which included rules on criminal procedure codified from General Order No. 58 as Rules 106 to 122).¹⁵⁷

These Rules of the Court remained unchanged until 1964, when the Supreme Court issued the Revised Rules of the Court with Rules 110 to 127 entitled "Criminal Procedure." Although the court promulgated the new rules to incorporate post-independence case law and court rulings since 1940, the rules differed little from General Order No. 58. Instead, the Rules refined the General Order. For example, the Revised Rules included a provision indicating that a legitimate "ground for dismissal of . . . [a] case is that the facts alleged in the information do not constitute an offense."¹⁵⁸ This rule emanated from a 1963 fraudulent mortgage case in which the plaintiff's complaint failed to supply sufficient information to charge the defendants with the offense.¹⁵⁹ The Supreme Court also incorporated *People v. Plaza*¹⁶⁰ which permitted a party to amend a complaint at any time before the defendant entered his or her plea.¹⁶¹ Therefore, even though the Supreme Court issued new rules of criminal procedure, in reality, the Court did not stray far from the substance of General Order No. 58.

C. The Marcos Years

1. The Early Years and Martial Law

Ferdinand Marcos assumed office as President of the Philippines in 1965, and in 1969 became the first president in the nation's history to be

157. FORTUNATO GUPIT, JR., INNOVATIONS IN NEW CRIMINAL PROCEDURE 3 (1985).

158. Ceferino D. Villegas, *Criminal Procedure*, 39 PHIL. L.J. 226 (1964).

159. *People v. Sunpad*, G.R. No. L-18747 (1963).

160. *People v. Plaza*, G.R. No. L-18819 (1963).

161. 1985 RULES ON CRIMINAL PROCEDURE [R. CRIM. PROC.] 113(7) (Nov. 22, 1984) (Phil.).

reelected. During the first few years of his rule, the Philippines experienced a marked economic improvement, due in part to increased rice production and export of a newly discovered strain of rice.¹⁶² However, cultivating this rice required expensive heavy machinery far beyond the means of the average farmer. Thus only the wealthy landowners had the opportunity to share in this increased prosperity. Reacting to rumors of amassed wealth among the elite, Filipino students, farmers, and laborers began to rally against Marcos in early 1969, and this violence escalated for the next three years. In hopes of gaining control over the chaos in his country, Marcos declared martial law in 1972, during which time no change occurred to the Code of Criminal Procedure. Finally in 1981, Marcos lifted martial law and approximately four years later, the Supreme Court issued its most recent version of the Code of Criminal Procedure.

2. 1985 Code of Criminal Procedure

The Code of Criminal Procedure that governs present-day criminal procedure in the Philippines was last revised in 1985.¹⁶³ However, the 1985 Code barely changed the basic procedure that the Americans established in 1900 through General Order No. 58. Instead, the additions slightly altered the Code to incorporate societal changes consistent with existing modern law. In his analysis of the existing Code, Francisco Ed Lim, a scholar of Filipino criminal law, wrote that "a number of the changes introduced by the new Rules have been adopted from existing statutes, including the Constitution, and settled jurisprudence of the Supreme Court on criminal procedure."¹⁶⁴ These changes included such specific revisions as the following: (1) where to file a criminal complaint;¹⁶⁵ (2) how the state could initiate action on the deceased's behalf when a victim of a sedition, abduction, or rape who had no surviving relatives died before filing a complaint;¹⁶⁶ and (3) how to incorporate the *Luna v. Plaza* case (1968) (which held that the prosecution needed to present sufficient facts to the judge to convince him or her that probable cause for arrest existed).¹⁶⁷

162. Lela Garner Noble, *Politics in the Marcos Era*, in *CRISIS IN THE PHILIPPINES: THE MARCOS ERA AND BEYOND* 76 (John Bresnan ed. 1986).

163. RICARDO J. FRANCISCO, *CRIMINAL PROCEDURE: RULES OF COURT IN THE PHILIPPINES*, RULE 110-127 2 (1994).

164. Francisco Ed Lim, *The Old and New Rules on Criminal Procedure*, 8 *PHIL. L. GAZETTE* 14, (1985).

165. R. CRIM. PROC. 110(1)(a)(b)) (Phil.).

166. *Id.* 110(5).

167. *Luna v. Plaza*, L-27511 26 SCRA 310 (1968).

The procedures for filing a criminal case in 1997 under the 1985 Code remain almost the same as they were in 1900 under General Order No. 58. After the offended party had filed a complaint, the local police conducted an investigation to "determine (a) whether the crime was actually committed, and (b) if so whether sufficient grounds exist justifying the arrest of a suspect."¹⁶⁸ If sufficient grounds existed following the pre-arrest investigation, the police authorities took the suspect into custody, and the prosecution began its preliminary investigation. As under General Order No. 58, the 1985 Code of Criminal Procedure permits a suspect to be released on bail except when charged with a capital offense.¹⁶⁹ The Code requires the parties hold an arraignment and a pretrial conference in hopes of settling the case through a plea bargain. Most cases are currently settled in this manner. If a case is not resolved, however, the parties must proceed to trial with at least two day notice prior to the proceedings. Based upon all the evidence he or she has heard, a *judge* will enter a judgement within three months "from the date of submission of the case."¹⁷⁰

As in General Order No. 58, in the 1985 Code of Criminal Procedure, the rights of the accused are paramount. Rule 115 is devoted entirely to these basic legal rights which included:

(a) to be presumed innocent until the contrary is proved beyond a reasonable doubt; (b) to be informed of the nature and cause of the accusation . . . ; (c) to be present and defend in person and by counsel at every stage of the proceedings . . . ; (d) to testify as a witness in his own behalf . . . ; (e) to be exempt from being compelled to be a witness against himself; (f) to confront and cross examine the witness against him . . . (g) to have compulsory process issued to secure the attendance of witness and production of other evidence on his behalf; (h) to have a speedy, impartial and public trial; and (i) to have the right of appeal in all cases allowed and in the manner prescribed by law.¹⁷¹

Modern Philippine lawmakers adopted word for word the American colonials' greatest innovation--the fundamental rights of the accused.

168. FRANCISCO, *supra* note 163, at 5.

169. R. CRIM. PROC. 114(3) (Phil.).

170. FRANCISCO, *supra* note 163, at 6.

171. R. CRIM. PROC. 115 (Phil.).

Although the 1985 Code offers many personal freedoms, it fails to provide the accused with the right to a jury trial. It may be that the present-day Filipino legal system unknowingly retains a few of the Orientalist attitudes of the early American colonials, but more likely it is that trial by jury would be inappropriate in current Filipino society.

Often, modern legal disputes are resolved outside of the court systems. Instead of appealing to the court system to settle their discrepancies, many Filipinos reconcile their difference "through 'amicable settlement.'"¹⁷² In his article focusing on the legal system of the rural Philippine, Kit Machado, a scholar of Filipino legal history, explained that many of the personal disputes that arise in the Philippines are settled through alternative dispute resolution "outside of the state legal institutions."¹⁷³ He wrote that "most explanations of preference for informal means of dispute-processing in ex-colonial third world states stress cultural and social characteristics incompatible with the norms underlying legal institutions introduced by Western imperial powers. Such factors are clearly important in the prevalence of 'amicable settlement' in the Philippines."¹⁷⁴ Thus, perhaps the Western concept of trial by jury is "incompatible" with Filipino society and is a nonissue in the country's legal structure.

V. CONCLUSION

An indigenous legal structure and a Spanish adaptation of Roman law preceded the arrival of Americans in the Philippines. Seeking to dispel hostility and possible armed resistance and perhaps to gain the support of the Filipinos, Americans retained certain features of the indigenous and the Spanish legal traditions while gradually introducing a common law legal system. They initiated changes in civil marriage, a first step in an effort to separate church and state, and then enacted a new criminal code of procedure leaving the substantive Roman criminal law virtually untouched. As late as 1910, the existing Spanish law was still prominent in the American colonial judicial system.¹⁷⁵ The justices of the Philippine

172. Kit Machado, *State Legal Institutions and 'Amicable Settlement' in the Rural Philippines*, in THE EIGHTH CONFERENCE, INTERNATIONAL ASSOCIATION OF HISTORIANS OF ASIA: SELECTED PAPERS 748 (Mohd. Amin Hassan & Nik Hassan Shuhaimi Nik Abd. Rahman eds. 1988).

173. *Id.* at 751.

174. *Id.*

175. See *United States v. Laguna*, 17 Phil. 532 (1910).

Supreme Court wrote that, "it means simply that that portion of Spanish . . . [law] still survives."¹⁷⁶

Yet American political and economic interests demanded that a new legal system and governmental structure be developed in the Philippines. Although the Philippine Bill of Rights resembled the U.S. version, American lawmakers deliberately excluded the right of trial by jury by asserting that the Constitution applied only to territories incorporated into the United States. American colonials feared that granting such constitutional rights as a trial by jury might challenge U.S. control of the archipelago. Sanctioning trial by a jury of one's peers would offer ordinary Filipinos the right to determine the outcome of legal cases independent of American overseers. Instead, American officials and Philippine *ilustrados* dominated criminal and civil laws and procedures throughout the period of U.S. colonial rule.

As historian Ruby Paredes asserted "in the policy making process, the Americans had the power, but the *ilustrados* had the knowledge."¹⁷⁷ A scholar of colonial law added that colonial rule "was based . . . upon a delicate system of 'unequal bargains' . . . between representatives of the colonial powers at the periphery and the indigenous elites."¹⁷⁸ This collaboration permitted American colonial officials the opportunity to control the government in the Philippines without always firsthand participation. The Americans de-emphasized their political and economic motives and justified their occupation of the Islands as a "civilizing mission" to rid the Filipinos of their "backwardness" and help them "make progress." In their present state, the American imperialists explained, the Filipinos were not capable of trial by jury. Drawing on the Archipelago's history, the Americans also asserted that the Filipinos had never had a legal system that operated with a jury, so that the colonial officials had not deprived the Filipinos of an existing right.

In the early twentieth century, most Americans accepted this rationale and did not perceive it to be an imperialist tactic or an abridgement of Filipino legal sovereignty. In fact, as late as 1960, a University of Wisconsin graduate student wrote in his M.S. Thesis, "occasionally, our denial of the right of trial by jury has been criticized but this measure seems well justified in view of the low educational level of the people and

176. *Id.*, at 538.

177. Paredes, *supra* note 68, at 177.

178. W.J. Mommsen, *Introduction*, in *EUROPEAN EXPANSION AND LAW*, *supra* note 3, at 3.

their centuries of different experience in trial by judge rather than jury.”¹⁷⁹ Although the Philippines as a nation has changed dramatically since the early American colonial years, some of the laws which the colonials introduced, including the code of criminal procedure adopted in 1900, remain virtually intact in 1997 without any reference to the right of trial by jury.

179. Joseph James Corry, *A Venture at Altruistic Imperialism: The United States in the Philippine Islands From 1900 to 1910* 37 (1960) (M.S. thesis, University of Wisconsin (Madison)).

